(22,726)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 650.

JUAN PICO, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print
Caption	1	1
Proceedings in court of first instance	1	1
Complaint	2	1
Order that accused be brought before the court, &c.	3	2
Order that warrant issue	4	2
Arraignment and plea	4	2
Request for witnesses for defendant	4	2
Witnesses subpœnaed	5	3
Defendant's objections to witness Francisco Baquiran	5	3
Exhibit A—Complaint in case of The United States *vs.* Baquiran and Balayan	6	3
B—Motion to dismiss as to Baquiran	8	4
C—Order of dismissal as to Baquiran	9	5
Defendant's objections to witness José Balayang	10	5
Exhibit A—Complaint in case of The United States *vs.* Baquiran and Balayan	11	6
Motion to dismiss as to Balayang	13	7
Order of dismissal as to Balayang	14	7

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	Original.	Print
Defendant's Exhibit A—Letter of Francisco Baquiran to the Municipal President of Ilagan, March 2, 1909	15	8
B—Letter of Municipal President Maramag to Municipal Lieutenant of the hacienda of Maluno, March 3, 1909	16	9
C—Report of president of the municipal board of health of Ilagan	17	9
Government's Exhibit A—Complaint in case of The United States vs. Baquiran and Balayang	19	10
Order of arrest	21	11
Arraignment of Baquiran	22	12
Order of commitment, &c	22	12
Warrant for Balayang	22	12
Arraignment of Balayang	22	12
Motions and orders of dismissal	23	12
Trial commenced	23	13
Arraignment and plea	24	13
Proceedings at the trial	24	13
Evidence for the prosecution	24	13
Testimony of Eulogio Castellanes	24	13
Francisco Baquiran	31	16
Bienvenido Duarte	69	35
Anacleto Duarte	73	37
Anacleta Magas	81	41
Jose Balayang	88	45
Nicasio Claravall	92	47
Jose Banta	114	57
Nicasio Claravall (recalled)	125	63
Simeon Bayad	126	63
Luis Eugenio	132	66
Prosecution rests	136	68
Evidence for defendant	136	68
Testimony of Fernando Rustant	136	68
Maximo Teves	155	77
Dr. Cesar Sorarain	163	91
Baldomero Ancheta	206	102
Eulogio Castellanes	208	102
Offers of exhibits	209	102
Evidence in rebuttal	210	104
Testimony of Francisco Baquiran (recalled)	210	104
Nicasio Claravall (recalled)	212	105
Gabriel Maramag	214	105
Evidence closed	216	106
Stenographer's certificate	216	106
Decision	217	107
Notice of appeal, &c	234	110
Case transmitted to supreme court	224	110
Motion for new trial	224	110
Affidavit of Hermogenes Ramos	225	111
Maria Del Pilar	228	112
Juan Pico	230	113
Order as to consideration of motion for new trial	232	114

	Original.	Print
Assignment of errors	232	114
Argued and submitted	232	114
Decision	232	114
Exception to decision	233	114
Judgment	239	118
Exception to decision and judgment	239	118
Motion to dismiss, &c.	240	118
Decision on motion to dismiss	240	118
Petition for writ of error	241	119
Assignment of errors	258	126
Writ of error	260	127
Order allowing writ of error	269	132
Citation and service	270	132
Bail bond	272	133
Clerk's certificate	274	134
	277	135

1 In the Supreme Court of the United States.

JUAN PICO, Plaintiff in Error,
versus
THE UNITED STATES, Defendant in Error.

In Error to the Supreme Court of the Philippine Islands.

THE UNITED STATES
vs.
JUAN PICO

For Murder.

Be it remembered that the following proceedings were had in the Court of First Instance of the First Judicial District and in the Supreme Court of the Philippine Islands in the above-entitled cause, to-wit:

On the 15th day of March, 1909, a complaint was filed in the Court of First Instance of Isabela de Luzon, First Judicial District, against the defendant Juan Pico, which said complaint is in the words and figures following, to-wit:

2 *Complaint.*

No. 396.

"THE UNITED STATES
versus
JUAN PICO.

For Murder.

"In the Court of First Instance of the Province of Isabela, First Judicial District, this 15th Day of March, 1909.

"The undersigned accuses Juan Picó of the crime of murder, with the qualifying circumstance of alevosía (treachery), as defined and penalized in section 403 of the Penal Code, committed as follows:

"1st. That the said Juan Picó on or about the evening of the 1st day of March, 1909, at a place known as 'The Hacienda of Maluno,' within the municipality of Ilagan, Province of Isabela, P. I., voluntarily, unlawfully and feloniously ordered one Francisco Baquiran to seize a Chinaman by the name of Go-Siengco, and instructed his two servants, named José Balayang and Hermogenes Ramos, to tie the said Chinaman, which said orders and instructions from the accused were by them immediately complied with.

"2nd. That the said Chinaman Go-Siengco was tied by the neck and by the arms behind his back, pursuant to the said orders from

the said accused Juan Picó, thus rendering it impossible for
3 the Chinaman to defend himself, and the said accused, Juan Picó, at the said time and place, with the intention of killing the said Chinaman Go-Siengco, struck him several blows with a shotgun, as a result of which said blows the said Chinaman Go-Siengco subsequently died; all in violation of the statute in such cases made and provided.

(Signed) "V. NEPOMUCENO,
"District Attorney."

"Subscribed and sworn to before me this 15th day of March, 1909.

(Signed) "FRANCISCO TACAD,
"Clerk of Court."

Received Copy.

(Signed) "S. A. HARVEY,
"Attorney for Defendant."

Witnesses:

"Manuel Izquierdo ong Beng.
"Luy Chayco.
"Eulogio Castellanes.
"Francisco Baquiran.
"Anacleta Magas.
"Jose Balayan.
"Hermogenes Ramos.
"Nicasio P. Claravall.
"Jose Banta."

4 Thereafter and on the 15th day of March, 1909, the court made an order directing that the accused be brought before the said court and duly informed of the charge against him.

Thereafter and on the said 15th day of March, 1909, the court ordered that a warrant issue for the arrest of the said accused, Juan Picó, directing that he be confined in the provincial jail of Isabela pending trial of the said cause.

Thereafter and on the 16th day of March, 1909, the accused, Juan Picó, accompanied by his attorney, was, in open court, duly arraigned and informed, through an interpreter, of the charge against him, copy of which was delivered to him, and having been asked by the court to state whether he pleaded guilty or not guilty to the complaint, the defendant pleaded "not guilty;" whereupon the court fixed the 26th day of March, 1909, at 8 a. m. for the trial of said cause.

Thereafter and on the 23rd day of March, 1909, counsel for defendant requested the clerk of the Court of First Instance in writing to subpœna certain witnesses for the defence, including the justice of the peace of Ilagan, Isabela de Luzon, whom the said attorney asked to be required to bring with him the record of the case of the United States versus Francisco Baquiran and Jose Balayan, on file in his court.

5 Thereafter subpœnas were duly issued for all of the witnesses, both for the prosecution and the accused.

Thereafter and on the 26th day of March, 1909, counsel for defendant filed the following objection in writing:

(Title of Court and Cause Omitted.)

"The defendant in the above-entitled cause objects to the witness Francisco Baquiran giving any testimony in this cause; and objects to his competency as a witness for the following reasons:

"1st. That the said witness was accused in the court of the justice of the peace of Ilagan of the commission of the same offence with which the defendant in this cause is now charged, and consequently his relation as a co-defendant of the accused in this case still exists.

"2nd. That the said justice of the peace dismissed the complaint against the said witness while he was so accused in order that he could be used as a witness for the prosecution, that is to say, for the government, in the court of first instance, in violation of the law.

"3rd. That the said witness has neither been convicted nor acquitted of the crime with which he was charged and has never been discharged from custody by the court in conformity with sections 34 and 35 of General Orders No. 58 in order to be used as a
6 witness for the government in this cause.

"4th. That the testimony of this witness has been obtained by means of threats and promise of reward or immunity from prosecution.

"This objection is supported by a copy of the complaint filed against the said witness in the court of the justice of the peace, a copy of the motion of the district attorney asking that the said witness be discharged from custody in order that he may be used as a witness in favor of the government in the court of first instance, and a copy of the order of the justice of the peace dismissing the said cause for that purpose all of which are hereto attached and marked Exhibits 'A', 'B' and 'C', respectively."

"EXHIBIT 'A'.

"Complaint.

"THE UNITED STATES
versus
FRANCISCO BAQUIRAN and the MUTE JOSE BALAYAN.

For Murder.

"In the Court of the Justice of the Peace, Ilagan, Province of Isabela.

"The undersigned accuses Francisco Baquiran and the
7 mute José Balayan of the crime of murder, as defined and penalized in section 403 of the Penal Code, committed as follows:

"That the said Francisco Baquiran and the mute José Balayan, on or about the evening of the 1st day of March, 1909, in the municipality of Ilagan, Province of Isabela, P. I., wilfully, unlawfully and feloniously went to the house of Eulogio Castellanes in search of the Chinaman Go-Siengco, and, by direction of Juan Picó, seized and tied the said Chinaman and took him to the Hacienda Building of 'The Hacienda of Malunó' in the said municipality, and while the said Chinaman was thus tied and in a helpless condition, the said Juan Picó struck him several blows with the but end of a shotgun held in his hands, thereby causing the death of the said Chinaman Go-Siengco; all in violation of the statute in such cases made and provided.

(Signed) "VICENTE NEPOMUCENO,
District Attorney."

"Witnesses:

"Manuel Izquierdo,
"Suy-Saico,
"Eulogio Castellanes.

"Subscribed and sworn to before me this 11th day of March, 1909, at Ilagan, Province of Isabela, P. I.

(Signed) "LUIS EUGENIO,
Justice of the Peace."

8 "The foregoing is a true and correct copy of its original on file in my office.

(Signed) "LUIS EUGENIO,
"Justice of the Peace of Ilagan."

"EXHIBIT 'B'.

"Motion.

"The undersigned Prosecuting Attorney appears and states that it being necessary for him to use the accused Francisco Baquiran as a witness for the government, he respectfully requests that this cause be dismissed as to him.

"Ilagan, March 13, 1909.

(Signed) "VICENTE NEPOMUCENO,
District Attorney."

"The foregoing is a true and correct copy of its original on file in my office.

(Signed) "LUIS EUGENIO,
"Justice of the Peace of Ilagan."

9 "EXHIBIT 'C'.

"In the Court of the Justice of the Peace, Ilagan, this 13th Day of March, 1909.

"Order of Dismissal.

"Upon consideration of the motion of the District Attorney, and considering that the same is in conformity with the law, the complaint in this cause is hereby dismissed as to the defendant Francisco Baquiran, for the purpose stated in the said motion; and it is ordered that the warden of the provincial jail be directed to release him from confinement. It is so ordered.

(Signed) "LUIS EUGENIO,
"Justice of the Peace."

"The foregoing is a true and correct copy of its original on file in my office.

(Signed) "LUIS EUGENIO,
[COURT SEAL.] *"Justice of the Peace of Ilagan."*

Thereafter and on the 26th day of March, 1909, the attorney for the defendant, Juan Picó, filed the following objection:

(Title of Court and Cause Omitted.)

10 "The defendant objects to the witness José Belayang giving any testimony in this case; and he objects to his competency as a witness for the following reasons:

"1st. That the said witness was accused in the court of the justice of the peace of Ilagan of the commission of the same offence with which the defendant in this cause is now charged, and consequently his relation as a co-defendant of the accused in this case still exists.

"2nd. That the said justice of the peace dismissed the complaint against the said witness while he was so accused in order that he could be used as a witness for the prosecution, that is to say, for the government, in the court of first instance, in violation of the law.

"3rd. That the said witness has neither been convicted nor acquitted of the crime with which he was charged and has never been discharged from custody by the court in conformity with sections 34 and 35 of General Orders No. 58 in order to be used as a witness for the government in this cause.

"4th. That the testimony of this witness has been obtained by means of threats and promise of reward or immunity from prosecution.

"This objection is supported by a copy of the complaint filed against the said witness in the court of the justice of the peace, a copy of the motion of the district attorney asking that the said
11 witness be discharged from custody in order that he may be used as a witness in favor of the government in the court of

first instance, and a copy of the order of the justice of the peace dismissing the said cause for that purpose, all of which are hereto attached and marked Exhibits 'A,' 'B' and 'C,' respectively."

"EXHIBIT 'A.'

"Complaint.

"THE UNITED STATES
versus
FRANCISCO BAQUIRAN and the Mute JOSE BALAYAN.

For Murder.

"In the Court of the Justice of the Peace, Ilagan, Province of Isabela.

"The undersigned accuses Francisco Baquiran and the mute José Balayan of the crime of murder, as defined and penalized in section 403 of the Penal Code, committed as follows:

"That the said Francisco Baquiran and the mute José Balayan, on or about the evening of the 1st day of March, 1909, in the municipality of Ilagan, Province of Isabela, P. I., wilfully, unlawfully and feloniously went to the house of Eulogio Castellanes in search of the Chinaman Go-Siengco, and, by direction of
12 Juan Picó, seized and tied the said Chinaman and took him to the Hacienda Building of 'The Hacienda of Malunó' in the said municipality, and while the said Chinaman was thus tied and in a helpless condition, the said Juan Picó struck him several blows with the but end of a shotgun held in his hands, thereby causing the death of the said Chinaman Go-Siengco; all in violation of the statute in such cases made and provided.

(Signed) "VICENTE NEPOMUCENO,
District Attorney."

"Witnesses:

"Manuel Izquierdo,
"Suy-Saico,
"Eulogio Castellanes,

"Subscribed and sworn to before me this 11th day of March, 1909, at Ilagan, Province of Isabela, P. I.

(Signed) "LUIS EUGENIO,
Justice of the Peace."

"The foregoing is a true and correct copy of its original on file in my office.

(Signed) "LUIS EUGENIO,
Justice of the Peace of Ilagan."

13 "EXHIBIT 'B.'

"THE UNITED STATES OF AMERICA,
Philippine Islands:

"In the Court of the Justice of the Peace, Ilagan, Province of Isabela.

"THE UNITED STATES
versus
FRANCISCO BAQUIRAN and the Mute JOSE BALAYANG.

For Murder.

"Motion.

"The undersigned district attorney appears before this court and asks that the above-entitled cause be dismissed as to the defendant The Mute José Balayang, in order that he may be used as a witness for the government in the court of first instance.

"Ilagan, Isabela, March 13, 1909.

(Signed) "VICENTE NEPOMUCENO,
District Attorney."

"The foregoing is a true and correct copy of its original on file in my office.

(Signed) "LUIS EUGENIO,
Justice of the Peace of Ilagan."

14 "EXHIBIT 'C.'

"In the Court of the Justice of the Peace, Ilagan, This 13th Day of March, 1909.

"Order of Dismissal.

"Upon consideration of the motion of the District Attorney, and considering that the same is in conformity with the law, the complaint in this cause is hereby dismissed as to the defendant The Mute Jose Balayang, for the purpose stated in the said motion; and it is ordered that the warden of the provincial jail be directed to release him from confinement. It is so ordered.

(Signed) "LUIS EUGENIO,
Justice of the Peace."

"The foregoing is a true and correct copy of its original on file in my office.

(Signed) "LUIS EUGENIO,
[COURT SEAL.] *Justice of the Peace of Ilagan.*"

15 "DEFENDANTS' EXHIBIT 'A.'

"Cause No. 396.

"THE UNITED STATES
versus
JUAN PICO.

For Murder.

"MALUNÓ, *March* 2, 1909.

The Municipal President of Ilagan.

SIR: The undersigned having been informed that there were some suspicious characters within the Hacienda of Malunó, and in view of the fact that some of the tenants of the said hacienda have been paid their s[illegible]re of the tobacco crop, and in compliance with the strict orders recently received from your office, I deemed it necessary to report to Don Juan Picó, the manager of the said hacienda, the following facts: I proceeded with the said gentleman and employés to make an inspection of the hacienda and met the Chinaman Go-Sieng, between 11 and 12 o'clock of the night of the 1st instant, within the limits of the said hacienda, and in order to avoid the possibility of any injury to the said Chinaman we decided to send him to the Hacienda Building, accompanied by the watchman Simeon Bayad. At 4 o'clock this morning the said Simeon Bayad reported to me that the Chinaman Go-Sieng had died without
16 his noticing it; and being ignorant of the cause of the death of the said Chinaman I asked Dr. Teves, who lives on the hacienda, to give me his opinion as to the probable cause of the death of the said Go-Sieng. The said doctor was of the opinion that the Chinaman died of heart failure. I accordingly enclose a detailed list of the various articles found upon the body of the deceased, as follows: One leather belt, plain; one leather belt, with several pockets, in one of which is a merchant's license and P29.05 in coin, which will be delivered by the messenger, the bearer of this letter, Nicomedes Crisostomo. Kindly acknowledge receipt of the articles enumerated in this letter.

Yours respectfully,

FRANCISCO BAQUIRAN."

"DEFENDANTS' EXHIBIT 'B.'

"Cause No. 396.

"THE UNITED STATES
versus
JUAN PICO.

For Murder.

"OFFICE OF THE MUNICIPAL PRESIDENT,
ILAGAN, ISABELA, P. I., *March* 3, 1909.

The Municipal Lieutenant of the Hacienda of Malunó.

SIR: I have received your official letter of the 2nd of March, 1909, reporting the death of the Chinaman Go-Sieng as the result of heart disease. I also received a leather belt, plain; another
17 leather belt with pockets, a merchant's license, and P29.05 in silver coin, the property of the said Chinaman.

Respectfully,

GABRIEL MARAMAG,
Municipal President."

"DEFENDANTS' EXHIBIT 'C.'

Cause No. 396.

"THE UNITED STATES
versus
JUAN PICO.

For Murder.

"I, Nicasio P. Claravall, President of the Municipal Board of Health of Ilagan, a ministering surgeon and a graduate of the University of Santo Tomas of Manila, do hereby certify: That, by virtue of a communication from the justice of the peace of this capital, requesting that an examination be made of the body of the Chinaman Go-Siengco, deceased, who was buried in the Cemetery of Malunó at half past five on the afternoon of the fifth instant, together with the justice of the peace, the municipal president, Dr. Cesar de Sorrarain, Mr. Maximo Teves, and other persons who went with us, I proceeded to disinter the body
18 with all the necessary precautions in the presence of the said gentlemen, and made the necessary examination, which resulted as follows:

"The deceased wore a coat, with short sleeves, made of striped cloth, wide trousers such as are ordinarily worn by Chinese, and under the coat a white undershirt, and having been stripped of the said clothing the body presented the following appearance:

"The skin had a special color, with some blood clots described as follows:

"The head was in a normal condition, some of the hair having fallen out; the face with an eye half open, and the tongue protruding about two centimeters out of the mouth; several livid spots on the neck, and blood clots on the right side about three or four centimeters more or less below the right nipple; several livid spots on the left shoulder; some blood clots and livid spots on the right shoulder and right forearm; livid spots on the lower abdomen; blood clots on the hips, and the rectum protruding about three or four centimeters more or less.

"Upon opening the thoracic cavity the body presented certain blood clots upon the thoracic walls, as well as upon the pleura on the right side; the lung had a greenish color; the pharynx was in a normal condition; and the heart discolored and in a complete state of vacuity.

19 "The body was swollen, particularly the abdomen, by reason of the formation of gases. Decomposition of the body had already set in.

"The body presented no other injuries except those already enumerated.

"In witness whereof, and at the request of the justice of the peace of Ilagan, I have signed these presents this 6th day of March, nineteen hundred and nine.

(Signed) "IGNACIO P. CLARAVALL,
"Surgeon, Chairman of the Municipal Board of Health."

"EXHIBIT 'A' OF THE GOVERNMENT.

"Proceedings Had in the Court of the Justice of the Peace of Ilagan.

"THE UNITED STATES
versus
FRANCISCO BAQUIRAN and the Mute JOSE BALAYANG.

For Murder.

"Complaint.

(Title of Court and Cause Omitted.)

"In the Court of the Justice of the Peace, Ilagan, Province of Isabela.

"The undersigned accuses Francisco Baquiran and the
20 mute José Balayang of the crime of murder, as defined and penalized in section 403 of the Penal Code, committed as follows:

"That the said Francisco Baquiran and the mute José Balayan, on or about the evening of the 1st day of March, 1909, in the municipality of Ilagan, Province of Isabela, P. I., wilfully, unlaw-

fully and feloniously went to the house of Eulogio Castellanes in search of the Chinamen Go-Siengco, and, by direction of Juan Picó, seized and tied the said Chinaman and took him to the Hacienda Building of 'The Hacienda of Malunó' in the said municipality, and while the said Chinaman was thus tied and in a helpless condition, the said Juan Picó struck him several blows with the but end of a shotgun held in his hands, thereby causing the death of the said Chinaman Go-Siengco; all in violation of the statute in such cases made and provided.

(Signed) "V. NEPOMUCENO,
District Attorney."

"Witnesses:

"Manuel Izquierdo.
"Luy Saico.
"Eulogio Castellanes.

"Subscribed and sworn to before me this 11th day of March, 1909, at Ilagan, Province of Isabela, P. I.

(Signed) "LUIS EUGENIO,
Justice of the Peace."

21 *"Order of Arrest.*

(Title of Court and Cause Omitted.)

"To any Officer of the Law, Greeting:

"You are hereby ordered to arrest the persons of the defendants Francisco Baquiran and the mute José Balayang, residents of the Hacienda of Malunó, in the municipality of Ilagan, charged before me with the crime of murder, and to bring them before this court as soon as possible to be dealt with in accordance with the law.

"Given this 11th day of March, 1909.

(Signed) "LUIS EUGENIO,
[COURT SEAL.] *Justice of the Peace.*"

"Return.

"The foregoing order of arrest is hereby returned together with the person of the accused Francisco Baquiran.

"Ilagan, March 11, 1909.

(Signed) "EUSTAQUIO AGGABOS,
"Corporal, Municipal Police."

"In the Court of the Justice of the Peace, Ilagan, the 11th Day of March, 1909.

"Appearance: Before the undersigned justice of the peace,
22 the accused Francisco Baquiran appeared in this court, charged with the crime of murder, and thereupon was in-

formed of the charge against him and required to plead to the complaint, and after reading the said complaint, the defendant pleaded 'not guilty', to all of which I certify.

(Signed) "LUIS EUGENIO,
Justice of the Peace."

(Signed) "FRANCISCO BAQUIRAN."

"In the Court of the Justice of the Peace, Ilagan, the 11th Day of March, 1909.

"Order: Let the defendant be committed to the custody of the warden of the provincial jail until the further order of this court let a warrant issue for the arrest of the other defendant, José Balayang, the mute.

"It is so ordered.

(Signed) "LUIS EUGENIO,
Justice of the Peace."

Then follows a warrant for the arrest of the mute José Balayang, with the return of the chief of police thereon.

Then follows the arraignment of the mute José Balayang before the justice of the peace, and a certificate by the latter to the
23 effect that said José Balayang had pleaded "not guilty."

Then follows a motion by the district attorney asking that the said cause be dismissed as to the defendant José Balayang in order that he may be used as a witness for the government in the court of first instance, and the order of the justice of the peace granting said motion.

Then follows another motion by the district attorney asking that the case be dismissed as to the other defendant, Francisco Baquiran, in order that he may be used as a witness for the government in the court of first instance, and the order of the justice of the peace granting said motion.

Thereafter and on the 26th day of March, 1909, the case of The United States versus Juan Picó, No. 396, for murder, was duly tried before the said Court of First Instance of the Province of Isabela, First Judicial District, sitting in the municipality of Ilagan, the capital of the said province, the Hon. Richard Campbell presiding.

Appearances:

Messrs. W. M. Hawkins and S. A. Harvey, Attorneys for the defendant.

Mr. Vicente Nepomuceno, Prosecuting Attorney of the First Judicial District, for the Government.

24 The defendant, Juan Picó, was thereupon duly arraigned in open court and, after consultation with his attorneys, pleaded "not guilty", and the cause proceeded to trial.

Proceedings in the Trial Court.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Isabela, First Judicial District.

Criminal Cause No. 396.

THE UNITED STATES
versus
JUAN PICO.

For Murder.

Evidence for the Prosecution.

EULOGIO CASTELLANES, having been first duly sworn in accordance with law, testified as follows:

I am a native of Narbacan, Ilocos Sur, a resident of Ilagan, Province of Isabela, 63 years of age, married and a farmer by occupation.

Direct examination by the District Attorney:

Q. Where were you on the evening of the 1st of March, 1909?

A. At my house.

Q. Where is your house?

A. In the barrio of Malunó, Ilagan, Isabela.

Q. Do you remember whether anything unusual occurred at your house on that evening?

A. Yes sir.

Q. State what occurred?

A. It occurred that Mr. Picó, Mr. Teves, and the lieutenant came to my house and picked up a Chinaman who was then stopping with me.

Q. Who is the man Juan Picó to whom you refer?

A. Our manager.

Q. You mean to say that he is your chief and the chief of the other people living on the hacienda?

A. Yes sir.

Q. And who is Francisco Baquiran?

A. Our municipal lieutenant of the barrio of Malunó.

Q. Does the lieutenant Francisco Baquiran have any chief over him on the hacienda?

A. Yes sir; our manager.

Q. Who is your manager?

A. Don Juan Picó.

Q. Do you mean to say that you and lieutenant Francisco Baquiran are under the orders of Don Juan Picó?

A. Yes sir.

26 Q. You stated that they took a Chinaman out of your house. Will you please state how. Did Mr. Picó enter your house?

A. Yes sir.

Q. Before he entered your house, do you remember his having done anything?

A. Yes sir; when he arrived in the yard of my house he fired a shot.

Q. With what kind of arm?

A. With a shotgun.

Q. How many shots did he fire?

A. Three shots.

Q. Was that before he entered your house?

A. Yes sir.

Q. Did he enter the house after firing the shots?

A. He thereafter went to the steps and fired another shot.

Q. And after firing this last shot, did he enter the house?

A. He awoke me shouting "Eulogio", and I said "Sir."

Q. And what happened?

A. He then said, "Open the door", and I opened it.

Q. What else did he do?

A. He entered the house and asked me, "Do you have any guests?" and I replied, "Yes" because as a matter of fact I had a guest in my house that night. He then said, "Where is he?" and I said, "There he is", pointing out the guest to him.

27 Q. What else?

A. He went to the place where the guest was and tried to wake up the Chinaman, but as the Chinaman did not wake up, he struck him with the but- end of his gun.

Q. Who was that guest?

A. He was a Chinaman.

Q. Did you see him when he struck him with the but end of the gun?

A. Yes sir.

Q. What happened afterwards?

A. He struck the Chinaman again with the but end of his gun and the Chinaman seized the gun and attempted to take it away from him.

Q. You mean to say that Mr. Picó carried a gun while inside your house?

A. Yes sir.

Q. And he struck the Chinaman with the gun, did he?

A. Yes sir.

Q. Do you know why Mr. Picó was looking for this Chinaman or rather for your guest, and why he struck him with the gun?

A. I do not know that the Chinaman was guilty of any offence. He did not bring anything objectionable into my house.

Q. State whether or not the Chinaman had committed any offence there.

A. None whatever.

28 Q. Do you know whether there was any prohibition against Chinese merchants or any other person entering the hacienda for the purpose of buying and selling goods there?

A. Yes sir.

Q. Who had prohibited that?

A. Our manager, Mr. Picó.

Q. You mean to say that Mr. Picó did not want any merchant or any other person to enter the hacienda for trading purposes?

A. It seems to me that he did not, because otherwise he would not have acted as he did.

Q. What did you see Mr. Picó do after striking the Chinaman with the gun; what did he do afterwards?

DEFENCE: I object to the question because the witness has already stated that the accused struck only one blow and now the prosecution wants to have him state that more than one blow was struck.

The COURT: Objection overruled.

DEFENCE: With our exception.

WITNESS: Mr. Picó was about to strike another blow with his gun but the Chinaman caught hold of it and both struggled for its possession until the lieutenant arrived.

Q. What happened afterwards?

A. After the lieutenant took the gun away from them, although I am not sure, both of them separated and the Chinaman was taken downstairs.

29 Q. Who took him downstairs?

A. Mr. Picó and the lieutenant.

Q. Whom did you say they took downstairs?

A. The Chinaman.

Q. Do you mean out of your house?

A. Yes sir.

Q. And when they left the house, did you follow them?

A. No sir.

Q. Then you know nothing more about what happened that night?

A. No sir, because they took him out of my house.

Q. Do you know whether anything unusual happened in the morning of the following day, the 2nd of March?

A. I went to the office where they paid the employés of the hacienda and then I saw the body of the dead Chinaman being taken to the cemetery.

Q. Where were the laborers paid?

A. At the hacienda building.

Q. And who lived at the hacienda building?

A. Mr. Juan Picó, our manager.

Q. And did you see the dead Chinaman there?

A. It is true that I did not go into the house but the body of the deceased was carried through the place where we all were and all of us saw it.

Q. Do you mean to say that you saw the dead body of the China-

man who had been stopping at your house the night before,
30 when it was being carried on a stretcher to the burying ground?

A. Yes sir. I saw him dead on the stretcher while he was being taken to the cemetery.

Q. Was that the same Chinaman who was taken out of your house the night before?

DEFENCE: I object to the question as leading.

COURT: Objection sustained.

Q. Who was that Chinaman?

A. The same Chinaman that was taken out of my house.

Q. Are you sure that he was the same Chinaman that was taken out of your house the night before the day you went to the hacienda building to get your wages?

A. Yes sir.

COURT: What was the name of the Chinaman?

A. I do not know his name.

PROSECUTION: That is all.

Cross-examination by Counsel for Defendant:

Q. Where was the body of the dead Chinaman when you saw it on the following morning?

A. They took it right through the place where we all were waiting for our pay.

Q. My question is whether the body of the deceased was inside the house or outside, or on the road, or where?

A. On the street; on the road.

Q. And where were you standing?

31 A. We were altogether in a store where they sell drygoods and other merchandise.

Q. How far was the store where you were from the road through which the body of the deceased was taken when you saw it?

A. Not very far; it was near, because the store is right on the side of the road along which the body of the Chinaman was taken.

Q. Can you indicate the distance?

A. A distance of about 4 yards.

Q. Can you state how much that is? Can you state more or less the hour when you saw that, that is to say, when you saw the body of the deceased Chinaman?

A. I cannot state exactly the hour, but it was daytime.

Q. That is all.

Francisco Baquiran (a Witness for the Prosecution).

DEFENCE: The defendant objects to the witness Francisco Baquiran giving any testimony in this case and also objects to the competency of the witness for the reasons stated in this motion, which he now submits to the court. (Counsel hands motion to the court.)

DISTRICT ATTORNEY: I will ask the court to overrule defendant's

motion for the reason that although this witness has been
32 heretofore prosecuted, General Orders No. 58 authorizes the prosecution to exclude from the complaint one or more of the defendants in order to use them as witnesses for the government. As to the allegations of promise and duress employed, I desire to say that no duress has been employed, no promise whatever made and no force of any kind or any other unlawful means have been used, and I therefore insist that the said motion be overruled.

COURT: The complaint filed by the prosecution in criminal causes, in the opinion of this court, is equivalent to an indictment by a grand jury in the United States. There is absolutely no difference and the prosecution has the same discretion as the grand jury. It may charge all the persons arrested by the police, and it may charge one or more, according to its own judgment and discretion, when the complaint is filed in the court of first instance. The discretion of the prosecuting attorney is as broad as the discretion of the grand jury in the United States, and I feel confident that Mr. Nepomuceno has acted in good faith and absolute justice in this case. If anything should develop during the trial impeaching the competency of this witness, it will be a good opportunity for the defence, who may object, and the defence can take advantage of it, and the court will be under the obligation to sustain it if it has any foundation in the record. The court overrules and denies the said motion, and directs that the prosecution proceed with the examination of the witness.

33 DEFENCE: With my exception.

FRANCISCO BAQUIRAN, having been first duly sworn in accordance with law, testified as follows, after exhibiting his certificate of registration No. F188720.

I am a native of Tumauini, a resident of Ilagan, Isabela, 31 years of age, married, and a farmer by occupation.

Direct examination by the District Attorney:

Q. Where were you on the 1st of March, 1909?
A. At home.
Q. Did you leave your house that night?
A. Yes sir.
Q. Where did you go?
A. I went to the hacienda building, because Mr. Picó sent for me.
Q. Can you point out Mr. Picó here?
A. Yes sir. (Witness indicates the accused.)
Q. What relation exists between you and Mr. Picó?
A. He was my chief.
Q. Is he your chief on the hacienda?
A. Yes sir.
Q. And was it for that reason that he sent for you?
A. Yes sir.
Q. Were you then under the orders of Mr. Picó?
A. Yes sir.

Q. What position does Mr. Picó hold on the hacienda?
34 A. He is the manager and chief of the hacienda.
Q. And did you hold any position under him?
A. Yes sir. I was lieutenant and clerk.
Q. You mean the clerk of the hacienda?
A. Yes sir.
Q. Were you paid any salary for your services?
A. Yes sir.
Q. Mr. Picó is your chief, is he not?
A. Yes sir.
Q. So that you were under his orders at the time, were you not?

DEFENCE: I object to the question as incompetent and immaterial.
COURT: Objection overruled.
DEFENCE: With my exception.

A. Yes sir.
Q. And when you arrived at the hacienda building on that night, what happened there?
A. When I arrived at the house of Mr. Picó he told me that we had to go out on patrol duty because orders had been received from the president saying that there were some suspicious characters within the hacienda, and it happened that on that night a man who was going in the direction of the house coming from the place where the laborers were being paid reported to Mr. Picó that he had been pursued by three unknown individuals, and Mr. Picó immediately sent for me in order to search for the said individuals.
35 Q. What else?
A. He also told me that we had to make a further inspection of the place, and he sent for me about midnight and when I arrived at his house he ordered four horses saddled, because we were four in the party. We started out along the road and when we arrived at a certain place we separated; Mr. Picó proceeded in a westerly direction with his two servants, and I, Mr. Tebes and Mr. Rustant followed the road and when we arrived at the fence of the adjoining farm we tied our horses to a post, and when we arrived at the house of Eulogio Castellanes, Mr. Picó was there ahead of us in company with his two servants, and there we met him. When we arrived at a place near the kitchen of the house he fired a shot; after this he went to the steps and fired another shot, and immediately thereafter I, Mr. Picó, and Tebes entered the house, and Mr. Picó called the owner of the house saying "Eulogio, open the door" and when we entered the house the persons who were there ran away, but we did not see them, and Mr. Picó asked the owner of the house whether there was any person stopping with him, and the owner replied that there was a Chinaman there. Then Mr. Picó immediately approached the Chinaman who was lying on the floor and called him three times, and as the Chinaman did not move, he struck him with the but- end of his gun; he was about to strike him again
36 when the Chinaman got up and seized the gun, and both were struggling for it, and I interfered and separated them, and after I separated the two of them Mr. Picó told me — "take him downstairs" and I immediately took him downstairs.

Q. Whom did you take downstairs?
A. The Chinaman.
Q. Do you mean to say that Mr. Picó ordered you to take the Chinaman downstairs?
A. Yes sir.
Q. Was that the same Chinaman whom he beat with his gun?
A. Yes sir.
Q. Proceed.
A. After I took him downstairs and while under the house, Mr. Picó turned the Chinaman over to his two servants and told them to keep him in custody.
Q. What are the names of those two boys who took the Chinaman into custody?
A. José Balayang and Hermogenes Ramos.
Q. What else?
A. I saw José Balayang when he tied the Chinaman.
Q. Why did he tie the Chinaman?
A. By order of Mr. Picó.
Q. How did he tie him?
A. I only noticed that his two arms were tied.
Q. You mean both elbows, how?
37 A. Both elbows together. I did not notice particularly how he was tied.
Q. But are you certain that the two elbows were tied together on the back with a string or cord?
A. Yes sir.
Q. Did that occur underneath the house of Eulogio Castellanes?
A. Yes sir.
Q. What happened after the Chinaman was tied up?
A. They made him walk and as the Chinaman refused to walk Mr. Picó struck him with the but end of the gun.
Q. But what happened afterwards?
A. When we went on the road the Chinaman again refused to walk and Mr. Picó said to him, "what is the matter with you, why don't you walk;" and when we got to a hill on the road the Chinaman stopped again and Mr. Picó struck him with his gun.
Q. Who struck him with the gun?
A. Mr. Picó.
Q. Whom did he strike with the gun?
A. The Chinaman.
Q. You mean the Chinaman who was tied up?
A. Yes sir.
Q. What else?
A. And then his two servants picked him up and when they got to the top of the hill the boys could not carry
38 the Chinaman and then Mr. Picó called two other boys to help them.
Q. What are the names of the boys that were called by Mr. Picó to help the others?
A. Anacleto Duarte and Bienvenido Duarte.

Q. What are the names of the two persons who first picked up the Chinaman?
A. José Balayang and Hermogenes Ramos.
Q. You mean José Balayang, the mute?
A. Yes sir.
Q. And Hermogenes Ramos, where is he now?
A. I do not know where he is.
Q. Have you looked for Hermogenes Ramos?

DEFENCE: I object to the question.
COURT: Objection sustained.
PROSECUTION: Question withdrawn.

Q. You stated that Mr. Picó called two other boys to help the first two to lift up the Chinaman. Why was it necessary to lift him up?
A. Yes, because the Chinaman could not walk.
Q. You mean to say that the Chinaman was so weak he could not walk?
A. Yes sir. Very weak.

DEFENCE: I object to this class of question, as being leading.
COURT: I think the prosecution ought to ask the witness
39 why the Chinaman could not walk.

PROSECUTION: Why could not the Chinaman walk?
A. I do not know whether it was on account of the blows with the but- of the gun which he had received.
Q. Then according to what you say the Chinaman was unable to walk after being struck with the but- of the gun?
A. Yes sir.
Q. Those two boys who you say were called to help the other two, did they render any assistance?
A. Yes sir.
Q. Did they actually assist them?
A. Yes sir.
Q. And did they render any help?
A. Yes sir.
Q. Where did they take the Chinaman?
A. To the hacienda building.
Q. And who lives at the hacienda building?
A. Mr. Picó.
Q. Who ordered the Chinaman taken to the hacienda building?

DEFENCE: I object to the question.
COURT: Objection overruled.
DEFENCE: With our exception.

WITNESS: Mr. Picó.
Q. So that the Chinaman was carried to the hacienda building by the four boys?

40 DEFENCE: I object to the question.
COURT: Objection sustained.

Q. How many persons carried the Chinaman to the hacienda building?
A. Four persons.
Q. What happened after they arrived there?
A. Nothing more.
Q. Where did they put the Chinaman?

DEFENCE: I object to the question because the witness has said nothing about taking the Chinaman to the hacienda building.
PROSECUTION: I withdraw the question.

Q. When they arrived at the hacienda building, what did they do to the Chinaman?
A. He was placed somewhere under the staircase.
Q. But what else?
A. I examined his belt and noticed that he had a merchant's license and a certain amount of money in it.
Q. Did you read the license?
A. Yes sir, and showed it to Mr. Picó and his companions.
Q. What was the name written on the license?
A. Go Sieng.
Q. Do you remember whether the name was Go Siengco?

DEFENCE: I object to the question as leading.
COURT: Objection sustained.

41 Q. And after you found the license, what happened?
A. The Chinaman was carried inside the building and placed in a room called the order room. (The room where orders were issued to the foremen in re work, etc.)
Q. And what happened after they put him there?
A. He lay there on the floor.
Q. What else?
A. I sent for a policeman to keep watch over him.
Q. Why did you send for a policeman to watch the Chinaman?
A. Because Mr. Picó told me to do so.
COURT: What is the name of the policeman called by you?
A. Simeon Bayad.
Q. And what did he do?
A. He remained there on guard.
Q. Commencing at what hour?
A. I think it was about one o'clock.
Q. When Simeon Bayad the policemen arrived at the building to watch the Chinaman, was the latter still tied or not?

DEFENCE: I object to the question as leading.
COURT: Objection overruled.
DEFENCE: With our exception.

A. No sir.
Q. From what hour was the policeman on guard?
A. I think it was about one o'clock.
Q. Do you mean one o'clock that night?
A. Yes sir.

42 Q. And what happened after that?

A. On the following morning the policeman came to me and told me that the Chinaman whom I told him to watch was dead.

Q. At what time did he say that to you?

A. It was about four o'clock in the morning.

Q. You mean of the 2nd day of the month?

A. Yes sir.

Q. And what did you do when he informed you that the Chinaman had died?

A. I went to the hacienda building.

Q. And what did you do there?

A. When I arrived there it was my duty to report this occurrence to the manager.

Q. And what happened afterwards?

A. The Chinaman was buried at eight o'clock in the morning.

Q. Why was he buried at eight o'clock in the morning?

A. Because it was pay day and the people were being paid I asked Mr. Picó what I should do with the body of the Chinaman and he told me to go ahead and bury him.

Q. And was he buried at eight o'clock of the morning of the 2nd day of the month?

A. At eight o'clock he was taken out of the hacienda building.

Q. To be buried?

A. Yes sir.

43 Q. And what was the name of the Chinaman who died in the order room and who was subsequently buried that morning?

A. The same Chinaman that we took out of the house of Eulogio Castellanes.

Q. Do you mean to say that it was the same Chinaman who was taken out of the house of Eulogio Castellanes and subsequently tied by order of Mr. Picó?

DEFENCE: I object to the question.

COURT: Objection overruled.

DEFENCE: With our exception.

A. Yes sir.

Q. And what is the name of the Chinaman who was beaten by the defendant, Picó?

A. He was the same Chinaman to whom I have referred before.

Q. Was he the same Chinaman who died in the order room and who was subsequently buried at eight o'clock in the morning?

A. Yes sir.

Q. And who was the Chinaman that had to be carried by four persons because he was unable to walk?

A. The same Chinaman who subsequently died.

Q. Do you mean the one who died in the order room?

A. Yes sir.

Q. And the same Chinaman who was buried at eight o'clock that morning?

44 A. Yes sir.

Q. Is that order room to which you refer a part of the hacienda building?

A. Yes sir.

Q. And who was living in the hacienda building at the time?

A. Mr. Picó.

Q. And after the dead Chinaman was buried, what happened next?

A. We returned to the hacienda building.

Q. And what did you do then?

A. They prepared a rough draft of the official report of the occurrence.

Q. Who are they?

DEFENCE: I object to the question as irrelevant and immaterial.

COURT: Objection overruled.

DEFENCE: With my exception.

A. Mr. Tebes is the one who prepared the rough draft of the official report of the occurrence.

Q. And who else?

A. Nobody else. Mr. Picó told him to prepare a rough draft of the official report.

Q. What report is that?

A. The report—— (Defence interrupts witness.)

DEFENCE: I object to the question as incompetent and
45 immaterial.

COURT: Objection overruled.

DEFENCE: With my exception.

A. The report of the death of the Chinaman to the municipal president.

Q. Who did you say prepared that report?

A. Mr. Tebes.

Q. And you merely copied from the rough draft, did you not?

DEFENCE: I object to the question.

COURT: Objection sustained.

Q. And after Mr. Tebes had prepared the rough draft of the report, what happened?

A. I had to prepare the final copy.

Q. And what happened afterwards?

A. I showed it to Mr. Picó for him to make any corrections he saw fit.

Q. And after he read it, what happened?

A. He said to me, "you sign here and forward the paper."

Q. And did you sign the paper?

A. Yes sir.

Q. Therefore, all that you had to do with the letter in question was to copy the same and sign it?

A. Yes sir.

Q. Do you remember whether the letter contained any statement as to the cause of the death of the Chinaman?

46 DEFENCE: I object to the question because the letter itself will be the best evidence.

COURT: Objection overruled.

A. I do not remember whether it was stated in the letter.

Q. Do you remember having seen the body of the Chinaman some four days later?

A. Yes sir.

Q. How did you come to see it?

A. When the justice of the peace, the president of the board of health and the municipal president went there.

Q. How did you manage to see the body of the Chinaman and what did they do there?

A. They went to disinter the body.

Q. How many days elapsed between the day he was buried and the day the body was disinterred?

A. Well, I think it was four days.

Q. Were you present when the body was disinterred?

A. Yes sir.

Q. And were you also present when the Chinaman was buried?

A. Yes sir.

Q. And whose body was that which was disinterred for examination?

A. The body of the same Chinaman who was buried there.

Q. Are you certain that it was the body of the same Chinaman who was buried at eight o'clock on the morning of the 2nd

47 day of March?

A. Yes sir.

Q. Was the body of any other Chinaman buried at that place at that time?

A. No.

Q. What happened after they disinterred the body?

A. They examined it.

Q. Who made the examination?

A. The president of the board of health.

Q. Who was he?

A. Nicasio Claravall.

Q. Were there any other persons present besides Nicasio Claravall?

A. Yes sir.

Q. Do you remember the names of some of them?

A. José Banta, and the municipal president Gabriel Maramag.

Q. Who else?

A. The justice of the peace.

Q. And who else?

A. Dr. Sorarain and Mr. Tebes.

Q. Who else?

A. And two Chinaman.

Q. Do you know the names of the Chinamen?

A. I do not.

PROSECUTION: That is all.

48 Cross-examination by COUNSEL FOR DEFENDANT:

Q. How long have you been a clerk employed in the hacienda building of Malunó?

A. Since 1902.

Q. Are you still a clerk employed on the hacienda?

A. Yes sir.

Q. Where do you live?

A. During the office hours I live in the hacienda building.

Q. And after office hours, where do you live?

A. In my own house.

Q. Within the hacienda itself?

A. Yes sir.

Q. Have you lived there since 1902?

A. Yes sir.

Q. And while you have been employed on the hacienda Mr. Picó has always been your chief?

A. Yes sir.

Q. I understood you to say that you were the lieutenant of that barrio? Is that so?

A. Yes sir.

Q. Are you such lieutenant of the barrio appointed by the president of the town and also by the town council?

A. Yes sir.

Q. And as such lieutenant of the barrio you are subject
49 to the orders of the municipal president of this town and also of the municipal council of your district?

A. Yes sir.

Q. Have you always complied faithfully with their orders?

A. Yes sir.

Q. The municipal president of Hagan and the town council of your district have no cause whatever to complain of any negligence on your part in the fulfillment of your duties, have they?

A. No sir.

Q. How long have you been lieutenant of the barrio?

A. Since 1904.

Q. Continuously?

A. Yes sir.

Q. During your incumbency of the office of lieutenant of the barrio have you ever sent similar reports to the municipal president of the town in performance of your duties as such lieutenant?

A. Yes sir, but I always had to consult first with Mr. Picó because he was my chief.

Q. During your incumbency of the office of lientenant of the barrio have you ever received any orders from the president of the town or from the town council of your district?

A. Yes sir.

Q. You received those orders from the president and from the town council of your district?

50 A. Yes sir.

Q. And as to the members of the police on duty in the said barrio, you are the chief, are you not?

A. Yes sir.

Q. Did you have any other men there at the hacienda under your orders?

A. The people residing in the barrio.

Q. All the persons living in that barrio are subject to your orders as lieutenant of the same, are they not?

A. Yes sir.

Q. And you gave them orders concerning the preservation of good order and peace within the barrio?

A. Yes sir.

Q. And what other duties have you in connection with the preservation of public order and the peace of the community?

A. Well, I also had to be in the office.

Q. José Balayang and Hermogenes Ramos lived within the hacienda of Malunó?

A. Yes sir.

Q. And they lived within your district, do they not?

A. Yes sir.

Q. How long have they lived within your district?

A. I do not remember. José Balayang must have lived there for a long time. When I first came to the hacienda I found him there.

51 Q. On the evening of the 1st of March, when you arrived at the house of Mr. Castellanes, you have stated here that after a certain struggle or fight between Mr. Picó and the Chinaman inside of the house, Mr. Picó told you to take the Chinaman downstairs. Is that true?

A. Yes sir.

Q. Well then, as I remember your testimony, from the time you took the Chinaman downstairs until you all arrived at the hacienda building, Mr. Picó did not give any further orders to you but to the other two, José Balayang and Hermogenes Ramos. Can you state why Mr. Picó gave orders to José Balayang and Hermogenes Ramos instead of giving said orders to you as the lieutenant of the barrio of Malunó?

A. I do not know why.

Q. Cannot you explain why Mr. Picó gave orders to the other two men and not to you, you being the lieutenant of the barrio?

A. No sir.

Q. As I remember your testimony, from the moment you left the hacienda for the first time that night until you arrived at the house of Mr. Castellanes, Mr. Picó invariably gave his orders to you. Can you state why during that time Mr. Picó gave orders to you and not to the other two men?

A. Yes sir, because I was the lieutenant of the barrio.

Q. Can you state why after you arrived at the house of Mr. Castellanes on the night in question, and subsequent thereto, Mr. Picó gave his orders to others, and not to you, with reference

52 to the Chinaman?

A. No sir.

Q. Then on the morning of the following day, which was the 2nd

day of the month of March, Mr. Picó gave orders to no other person except you concerning the deceased Chinaman?

A. Yes sir.

Q. Can you state why Mr. Picó did not give instructions to any other persons except you concerning the deceased Chinaman?

A. Yes sir, because he told me to send for some people (men) to bury the Chinaman.

Q. And did you order the people (men) to bury him?

A. Yes sir, in compliance with the orders received from Mr. Picó.

Q. Do you remember any order or circular issued by the president of the town with reference to the preservation of public order and tranquility in the barrio of Malunó I mean recently?

A. Yes sir.

Q. And have you acted under and by virtue of said order or circular?

A. Yes sir, I explained everything to the people.

Q. I will now read to you a circular which was sent by the president of this town to the different barrios of the municipality and will ask you whether you received a copy of the same. I also
53 wish to ask you whether you received a copy of the said order and explained the contents to the people of the barrio. The circular is as follows: "In view of a communication received by me from the provincial governor, as well as on account of information received by me to the effect that there are certain bad characters in the various barrios of this municipality, and in conformity with the provisions of section 40 of Act 82, and under the authority conferred upon me by the said section, I hereby call upon every male resident of this municipality to assist in the arrest of suspicious characters. And this order is issued so that every male inhabitants of this barrio may know that he is bound to render every assistance in his power to this end and to patrol their respective districts day and night in order that these bad characters may be apprehended, except such residents as may be sick, but all others between eighteen and fifty must comply with this order and take turns in patrolling and policing the districts during the day as well as the night, and all male inhabitants who fail to comply with this order you will report to me so that the corresponding punishment may be meted out to them. You are hereby held strictly responsible for the carrying out of this order. You are also ordered to report to me the names of all persons occupying a house in your barrio and the names of any strangers or suspicious persons who may be stopping with them. Please acknowledge receipt." I will now ask you whether you
54 have received a copy of this circular?

A. Yes sir; but the circular that I received was in the Ibanag dialect.

Q. But it was substantially the same as this one here, was it not?

A. Yes sir.

Q. Was this circular made public in the hacienda and barrio of Malunó?

A. Yes sir.

Q. Before the 1st of March?

A. Yes sir.
Q. Of this year?
A. Yes sir.
Q. Did you report to the municipal president of this town the death and burial of a Chinaman who died at the hacienda of Malunó during the night of the 1st of March, 1909?
A. Yes sir.
Q. I will now show you a letter dated at Malunó the 2nd day of March, addressed to the president of Ilagan and signed by Francisco Baquiran, which is said to be a report made by you at that time and will ask you to read it and state whether it is the same report that you made to him?
A. Yes sir. This is what I copied from the rough draft prepared by Mr. Tebes.
Q. And was that the report you sent to the president of Ilagan concerning the death and burial of the Chinaman who died
55 in the barrio of Malunó on the night of the 1st of March, 1909?
A. Yes sir.
Q. And did you send that report in the performance of your duties as such lieutenant of the barrio?
A. Yes sir.
Q. And did you make that report to the president of Ilagan as your superior?
A. Yes sir.
Q. Do you know whether the president received the report to which you have just referred?
A. Yes sir.
Q. How do you know that he received it?
A. Yes sir, because he acknowledged the receipt of the same.
Q. Please read this memorandum at the bottom of the report and state whether or not this was the acknowledgment of receipt signed by the municipal president of Ilagan of the report made by you concerning the burial of the Chinaman who died in the barrio of Malunó on the 1st of March, 1909.
A. Yes sir, it is the same.

DEFENCE: I now introduce in evidence the two documents referred to by the witness and identified by him, as Exhibits "A" and "B".

PROSECUTION: I have no objection.

COURT: The documents marked Exhibits "A" and "B" are admitted in evidence.

56 Q. You, Mr. Picó and Mr. Rustant went from the hacienda building to the house of Eulogio Castellanes on horseback on the evening of the 1st of March, 1909, did you not?
A. Yes sir.
Q. And you returned to the hacienda building on horseback, did you not?
A. Yes sir.

Q. I understood you to say that you are at present employed on the hacienda of Malunó?

A. Yes sir.

Q. Where have you lived since the 15th of the present month of March?

A. Here in the town of Ilagan.

Q. But where, in what part of the town?

A. At the ranch of Alinguigan.

Q. In what part of the town of Ilagan is that ranch of Alinguigan to which you refer?

A. On the eastern side of the river Pinakanauan and east of the town.

Q. Near the center of the town?

A. Yes sir.

Q. What have you been doing at that ranch since the 15 of March?

A. Nothing, but as my wife was sick with headache that was the reason why we were stopping at her uncle's house.

Q. And was that the only reason why you were there, on
57 account of your wife's headache?

A. Yes sir.

Q. Why were you not at Malunó attending to your own duties and obligations as a clerk of the hacienda?

A. I was unable to go because this case had not yet been tried.

Q. Do you mean to say that the reason you did not return to Malunó was because this case had not yet been tried?

A. Yes sir.

Q. Were you subpœnaed to appear as a witness in this court?

A. Yes sir.

Q. Do you remember when the subpœna was served on you?

A. I do not.

Q. Who notified you?

A. The prosecuting attorney.

Q. Do you remember how long it is since the prosecuting attorney asked you to appear as a witness in this court in the present case?

A. About four days.

Q. What did he say to you?

A. He told me to be sure to appear here as a witness on the 26th.

Q. Did he tell you not to leave town?

A. He told me not to go too far away.

Q. Then you have been at the barrio of Alinguigan four
58 days waiting for the trial of this cause?

A. Yes sir.

Q. When were you last at the hacienda of Malunó?

A. On the 8th of the present month.

Q. And have you been near this town of Ilagan right along since that time?

A. In the center of the town.

Q. This is the 26th of March and four days prior to this date would be the 21st or the 22nd, depends how you figure it. I will now ask you why you did not return to the hacienda of Malunó to

attend to your obligations and duties as a clerk between the 8th and the 21st of March?

A. On the 8th I went to the house where Mr. Picó was stopping, the house of Mrs. Venancia. I called there the evening of the 8th and remained there until the 11th.

Q. Now then, from the 11th to the 21st of March, why did you not return to the hacienda of Malunó to attend to your business and duties as an employé of the hacienda?

A. I was in jail from the 11th to the 13th, inclusive.

Q. And from the 13th to the 21st you were at the ranch to which you have just referred, were you not?

A. Yes sir.

Q. And what were you waiting there for?

A. My wife was sick.

Q. With headache?

A. Yes sir.

59 Q. And was that the only reason why you did not return to your work as a clerk on the hacienda of Malunó?

A. Yes sir.

Q. Now why did you not return to the hacienda of Malunó to attend to your duties as lieutenant of the barrio?

A. I did not for the reason that my wife was sick.

Q. Are you still lieutenant of the barrio of Malunó?

A. Yes sir.

Q. Has the president of the town or the council of your district given you permission to leave the barrio or to absent yourself?

A. No sir.

Q. Then you were absent from the hacienda of Malunó from the 13th of March to the 21st of the same month and you abandoned your duties and obligations as an employé of the hacienda and lieutenant of the barrio for the simple reason that your wife was suffering from headache?

A. Yes sir.

Q. Was not this the first time you left the barrio and abandoned your duties only because your wife was suffering from headache?

A. Yes sir.

Q. Is your wife still suffering from headache?

A. She is a little better now.

Q. While you have been in the employ of the hacienda of Malunó, you have never absented yourself nor have you neglected

60 your duties on account of some member of your family suffering from headache?

A. Never. I always asked for permission to do so.

Q. You have said that you were in jail from the 11th until the 13th. Why were you in jail?

A. Because I could not think well as to what I had to testify in this case.

Q. Do you mean to say that you were put in jail simply because you could not remember what you had to testify in this case?

A. Yes sir. Because I told a lie.

Q. Before whom did you tell that lie?

A. Before the justice of the peace and the district attorney.

Q. And were you put in jail because you had told a lie to the judge and the district attorney?

A. Yes sir.

Q. Where were you at the time you told that lie to the court and to the district attorney?

A. In the justice court.

Q. And how did the justice of the peace and the district attorney learn that you had testified falsely?

A. Yes, because when I was asked whether I knew anything about this case I told them that I had seen nothing at all.

Q. What case do you mean, the case against Juan Picó?

A. Yes sir.

61 Q. Do you know whether the justice of the peace and the district attorney took down what you now say was a lie?

A. I do not remember whether they did or not.

Q. Do you remember having seen the statement made by you before the judge and the district attorney?

A. Yes sir. They told me to sign the statement made by me.

Q. And did you sign it?

A. Yes sir.

Q. Do you know where that testimony is now?

A. I do not know.

Q. You have just said that you were put in jail because you testified to a falsehood in the case against Mr. Picó. How did they know that you testified falsely?

A. Yes, because the owner of the house also testified and my testimony did not jibe with his.

Q. And how did they know that your testimony was false and that the statement made by that other person was true? How did the district attorney and the justice of the peace conclude that your testimony was false simply because it did not jibe with the statement made by the owner of the house?

A. Yes sir, because when they asked me to state what I know I told them that I had seen nothing.

Q. Who is the owner of the house to whom you refer?

A. Eulogio Castellanes.

Q. Did he testify at the same time that you did in the

62 case against Picó?

A. Yes sir.

Q. Do you remember the day?

A. It was the 11th.

Q. And after you and Castellanes testified before the district attorney and the justice of the peace, you were put in jail, were you not?

A. Yes sir.

Q. You and Castellanes testified here in the justice court in the presence of the district attorney and the justice of the peace, did you not?

A. Yes sir.

Q. You were also charged in the court of the justice of the peace

of Ilagan with the murder of a Chinaman by the name of Go Siengco, were you not?

A. Yes sir. The district attorney is the one who filed the complaint.

Q. And that complaint was filed against you on the 11th day of March, was it not?

A. Yes sir.

Q. And you were kept in jail for two days, from the 11th to the 13th?

A. Yes sir.

Q. Do you know what became of that case against you for the murder of Go Siengco; do you know what the judgment of the justice of the peace was in that case against you for the killing of Go Siengco?

63 A. No sir.

Q. Do you know whether the complaint was dismissed?

A. Yes sir.

Q. Was it dismissed?

A. Yes sir.

Q. Do you know why?

A. No sir.

Q. And how did you become to be discharged from custody?

A. Because I then realized that the man who tells a lie will eventually be punished by God and justice, whereas the man who tells the truth will be rewarded both by justice and God.

Q. When did you think of that?

A. On the 13th.

Q. And did you communicate to anybody your conclusion to tell the truth in this case?

A. The only persons to whom I spoke about it were the district attorney and the justice of the peace.

Q. And what did they say to you?

A. They said: "We do not compel you to say anything here at all. If you voluntarily want to tell the truth you can do so, but we will not compel you to do it."

Q. And at that time you signed the statement made by you in the court of the justice of the peace?

A. Yes sir.

Q. The fact that you concluded to tell the truth to the district attorney and the justice of the peace, was that the only

64 reason why the case against you was dismissed?

A. Yes sir.

Q. And did you believe at that time that if you told the truth you would thereby gain something and also obtain your liberty?

A. That was my belief, because I also thought that the man who tells the truth is loved both by justice and God.

Q. Do you still have that belief?

A. Yes sir.

Q. In this case too?

A. Yes sir.

Q. And with reference to the case against you which was dismissed?

A. Yes sir.

Q. Now then, is it not a fact that the case against you was dismissed because you promised and agreed to appear in this court of first instance and testify as a witness for the government in the case against Mr. Picó?

A. Yes sir.

Q. If Mr. Picó were convicted in this case on account of your having come here to testify as a witness for the government, do you expect to be prosecuted if it should develop that you took part in the commission of the crime with which Mr. Picó is charged?

A. No sir.

65 Q. And from the 13th of March, when you were set at liberty and the case against you was dismissed in the court of the justice of the peace, for having killed a man by the name of Go Siengco in the hacienda of Malunó on the night of the 1st of March, 1909, because you had concluded to tell the truth in this case against Mr. Picó, you did not return to attend to your work and duties as lieutenant of the barrio of Malunó and clerk of the hacienda?

A. No sir, because, in the first place, I did not want to disappoint the judicial authorities, and, in the second place, because my wife was sick at Alinguigan.

Q. Since the 13th of March, have you talked to any other person about this case, except what you said to the district attorney some four days ago?

A. No sir.

Q. You say that you were accused on the 11th of this month of the crime of murder in the court of the justice of the peace of this town; that you were charged with the killing of the Chinaman who you say died at the hacienda building on the night of the 1st of March, 1909, the same Chinaman who you claim was buried in the hacienda of Malunó?

A. Yes sir.

Q. And is that the same Chinaman that this defendant here is now charged with having murdered?

A. Yes sir.

Q. That is all.

66 Redirect examination by the DISTRICT ATTORNEY:

Q. Who dictated letter Exhibit "A" of the defence?

A. Mr. Tebes.

Q. Did you dictate the letter to him or did he write it without your telling him what to say?

A. He himself wrote it.

Q. And you signed it?

A. I signed it.

Q. And who is Mr. Tebes?

A. An employee of the hacienda.

Q. You mean of the hacienda of Malunó?

A. Yes sir.

Q. And who is Mr. Tebes' chief?
A. Mr. Picó.
Q. And who is your chief?
A. Mr. Picó.
Q. Then you and Mr. Tebes were under Mr. Picó's orders, were you not?
A. Yes sir.
Q. The orders given by Mr. Picó at the hacienda were obeyed by you, were they?
A. Yes sir.
Q. And why did you sign that letter?
A. Yes sir, I signed that letter because I was the lieutenant of the barrio, and furthermore I could not decline to obey the orders of my chief.

67 Q. And who was your chief?
A. Mr. Picó.

Q. You said here this morning that while you were near the hacienda building two other boys were called to help lift the body of the Chinaman, did you not?
A. Yes sir.
Q. And those two boys came?

DEFENCE: I object to the question.
COURT: Objection overruled.
DEFENCE: With our exception.

A. Yes sir.
Q. When those two boys came was the Chinaman still tied or not?

DEFENCE: I object to the question.
COURT: Objection overruled.
DEFENCE: With my exception.

A. He was not.
Q. All you have said here now is true, is it not?

DEFENCE: I object to the question.
COURT: Objection overruled.
DEFENCE: With my exception.

A. Yes sir.

PROSECUTION: That is all.

Questions by the COURT:

68 Q. That man Hermogenes Ramos who helped to lift up the Chinaman, who is he?
A. He is one of Mr. Picó's servants.
Q. Where is he now?
A. I do not know whether he is at present in Malunó.

Q. That is all.

DEFENCE: The defendant objected to the witness Francisco Baquiran testifying in this cause, he being the witness for the government

who has just given his testimony, on the ground that he is incompetent as a witness and also on account of the relation existing between him and the accused in this cause, and for the further reason that any statement which he might make would be incompetent, which said objection was overruled by the court and the defence excepted. That witness was permitted to testify over the objection of the defendant. The accused now asks that the testimony of the said Francisco Baquiran be stricken from the record for the reason that his testimony given in this court in this cause shows that he was influenced and induced to testify as he did under circumstances which render his testimony incompetent and inadmissible, and for this reason the defendant now asks that the same be stricken from the record.

PROSECUTION: The prosecution objected to the testimony of the witness who has just testified in this cause being stricken from the record, advancing in support of its objection the same reasons formerly adduced by it and asked the court to overrule defendant's motion.

69 COURT: The court after hearing the arguments of counsel believes that the motion of the attorney for the accused is not well taken and, therefore, overrules and denies the same, and the attorney for the government is hereby directed to proceed with the introduction of his proofs.

DEFENCE: With my exception.

PROSECUTION: I now ask the court for permission to present as a witness Bienvenido Duarte who, although his name does not appear as a witness in the complaint, has been shown to have had some connection with this case.

DEFENCE: The defendant objects to the testimony of this witness for the same reasons before stated.

COURT: The court allows the motion of counsel for the government and directs that the witness Bienvenido Duarte take the stand as a witness for the government and be sworn as such.

DEFENCE: With my exception.

BIENVENIDO DUARTE, having been first duly sworn in accordance with law, testified as follows:

I am a native and resident of Ilagan, Province of Isabela; I do not know my age; I am single and work as a servant for Mr. Picó.

70 Direct examination by the DISTRICT ATTORNEY:

Q. Are you still working as a servant for Mr. Picó?
A. Yes sir.
Q. Where were you on the evening of the 1st of March, 1909?
A. I was at the hacienda.
Q. In whose house?
A. In Mr. Picó's house.
Q. Why were you there?
A. Because we are his servants.
Q. Do you remember whether about midnight of that day someone called you?

A. Yes sir.
Q. By whom?
A. By Mr. Picó.
Q. Whom did he call, you alone, or the others too?
A. Only me.
Q. And what did Mr. Picó say to you?
A. He asked me to help lift the Chinaman.
Q. How many of you assisted in lifting the Chinaman?
A. We were four in all.
Q. Can you remember the names of those four?
A. Yes sir. Anacleto Duarte, myself, José Balayang and Hermogenes, but he is not here.
Q. Was anyone with Mr. Picó at the time?
A. Yes sir.
71 Q. Who?
A. Mr. Rustant, Mr. Tebes, lieutenant Francisco and Mr. Picó.
Q. Did you notice whether Mr. Picó had anything in his hands?
A. Yes sir.
Q. What was it?
A. A shotgun.
Q. Did Mr. Rustant carry anything in his hands?
A. No sir.
Q. Did Mr. Tebes have anything in his hands?
A. No sir.
Q. And the lieutenant of the barrio, did he carry anything in his hands?
A. No sir.
Q. And where did you carry the Chinaman?
A. To the hacienda building.
Q. Where is that?
A. I mean the main house where Mr. Picó lived.
Q. Did you lift the Chinaman?
A. Yes sir.
Q. Why did you not let him walk, by himself?
A. Because he was unable to walk.
Q. When you arrived at Mr. Picó's house, where did you put the Chinaman?
A. In the staircase.
72 Q. Do you mean near the staircase?

DEFENCE: I object to the question.
PROSECUTION: Question withdrawn.

Q. In what part of the staircase?
A. Under the staircase.
Q. Where did you leave him?
A. At the bottom of the last step.
Q. Do you mean way down on the last step?
A. On the ground.
Q. At what time did all that occur?
A. I do not know.

Q. Was it early in the evening, at midnight, or early in the morning?

DEFENCE: I object to the question because so far the witness has not said whether it was in the daytime or in the night.

Q. Was it in the daytime or in the nighttime?
A. It was in the nighttime.
Q. Can you state approximately the time at which this occurred?
A. I guess it must have been about eleven o'clock.
Q. Are you still working for Mr. Picó?
A. Yes sir.
Q. Do you live in the same house where Mrs. Picó lives?

DEFENCE: I object to the question.

Q. Where do you work now as a servant?
73 A. In the same house with Mr. Picó.

Q. That is all.

Cross-examination by COUNSEL FOR DEFENDANT:

Q. Was that a dark or a clear night?
A. Clear.
Q. Were you in an open space or surrounded by grass?
A. We were in a clear and open space.
Q. Were there any trees or shrubs?
A. No.
Q. Do you know the reason why the Chinaman was lifted, whether because he was weak and was unable to walk, or because he refused to walk?
A. I do not know; I am unable to say as to that because he said nothing to me about it.

Q. That is all.

Anacleto Duarte.

PROSECUTION: The name of this witness does not appear at the bottom of the complaint but in view of the fact that from the testimony of the other witnesses it appears that this man was one of the persons called by Mr. Picó to help lift the Chinaman and carry him to the house, because he was unable to walk, I now ask this court for permission to present him as a witness for the
74 prosecution in the interests of justice. I should add that before the commencement of the trial of this cause I furnished counsel for the defendant with the names of the witnesses whose names do not appear at the bottom of the complaint, of whose existence I was only informed subsequent to the filing of the complaint.

DEFENCE: To which motion counsel for the defendant objects for the reason that the name of this witness does not appear at the bottom of the complaint and because counsel was only advised that this witness would be called as such about an hour before the com-

mencement of the trial of this cause and, therefore, had no sufficient opportunity to prepare himself in order to meet any testimony which the witness might give, and for these reasons the defendant now objects to the motion of the attorney for the government.

COURT: The court allows the motion of the district attorney and permits the witness Anacleto Duarte to be sworn as a witness in this cause in the interests of justice, although his name does not appear at the bottom of the complaint.

DEFENCE: Exception.

ANACLETO DUARTE, having been first duly sworn, testified as follows:

I am a native of Nasippin of the Province of Cagayan, a resident of the hacienda of Malunó of the Province of Isabela, a widower; I do not know my age, and I am working as a servant for Mr. Picó.

75 Direct examination by the DISTRICT ATTORNEY:

Q. Who is that man Picó for whom you are working as a servant?
A. Mr. Juan Picó.
Q. Can you point him out?
A. Yes sir. (Witness indicates the defendant Juan Picó.)
Q. Are you still working for him as a servant?
A. Yes sir.
Q. Do you still live at the hacienda of Malunó?
A. Yes sir.
Q. In what house do you live?
A. In the big house.
Q. Who occupies the big house?
A. Mr. Juan Picó.
Q. Where were you on the evening of the 1st of March of this year?
A. At first I was at the Laban ranch planting tobacco.
Q. On the evening of Monday, the 1st of March, where were you?
A. I was at the hacienda building.
Q. Why were you there?
A. Yes sir; because I was working there as a servant.
Q. For whom?
A. For Mr. Picó.

Q. Do you remember anything unusual having occurred
76 there that night?

A. Yes sir.
Q. What was it?
A. The Chinaman who was brought to the house.
Q. Who brought the Chinaman to the house?
A. Mr. Picó.
Q. How was the Chinaman brought to the house?
A. They brought him to the house but I do not know where they got him.
Q. So you mean to say that they brought the Chinaman to the house?

A. I do not know. I only woke up when they called me in order to help take the Chinaman into the house.
Q. How many were you?
A. There were four of us who took the Chinaman inside.
Q. Who were you?
A. Bienvenido Duarte, Anacleto Duarte, Guillermo whose surname I do not remember, and the mute.
Q. And when you arrived at the hacienda building, did you put the Chinaman in any particular place?

DEFENCE: I object to the question.

Q. When you arrived at the hacienda building, what did you do with the Chinaman?
A. I did not see anything done to him because he was completely exhausted and unable to speak.
Q. Did you put the Chinaman in any particular place?
77 A. We took him to the office where Mr. Picó usually gave his orders.
Q. Where was that? In what part of the house was it?
A. Near the staircase.
Q. While the Chinaman was there do you know whether anything happened?
A. That is all.
Q. Did you see Mr. Picó?
A. Yes sir.
Q. Do you know whether Mr. Picó had anything in his hands?
A. I did not see anything.
Q. Cannot you remember what he had?
A. He had a shotgun.
Q. Who do you mean, Mr. Picó?
A. Yes sir.
Q. Do you know whether he did anything with it?
A. I do not because they had all gone into the house.
Q. Did you see the lieutenant?
A. Yes sir.
Q. Do you know whether he had anything in his hands?
A. I did not see anything.
Q. Did Mr. Tebes have anything in his hands?
A. No sir.
Q. And Mr. Rustant?
A. I did not notice anything.

78 Cross-examination by COUNSEL FOR DEFENDANT:

Q. Did you speak to the Chinaman?
A. No sir, because he was unable to speak.
Q. How do you know that he was unable to speak?
A. Yes sir, because he was completely exhausted.
Q. How do you know that?
A. They brought him there in that condition.
Q. And that is all you know about it?
A. Yes sir.

Q. And for that reason you said he was unable to speak?
A. Yes sir.
Q. And when you saw the Chinaman for the first time, was it in an open place or in a place covered with grass and shrubs?
A. I saw him under the staircase.
Q. Was that the first time you saw him?
A. Yes sir, at the bottom of the steps.
Q. When you first saw the Chinaman was he on the last step of the stairs of the house?
A. Yes sir.
Q. And was that the last time you saw him?
A. Yes sir.
Q. Are you sure about that?
A. Yes sir.

Q. That is all.

79 Redirect examination by the PROSECUTION:

Q. Where is the Chinaman now?
A. He has been buried since.
Q. Why was he buried?
A. Yes, because he died.
Q. Then you are positive that he is dead; you saw him dead, did you not?
A. Yes sir.
Q. That is all.

Examination by the COURT:

Q. What was the state or condition of the Chinaman that made you think he was completely exhausted when brought to the house?
A. He was unable to move his body and it seemed that he had been beaten very badly.
Q. How do you know that?
A. Yes sir; because I noticed that he was completely exhausted.
Q. Was he being carried by anyone when brought to the hacienda buildings?
A. Yes sir.
Q. Who carried him?
A. The mute and Guillermo; they only.
Q. Guillermo what?
A. I do not know his surname.
80 Q. Who else?
A. The mute also.
Q. Who is Guillermo?
A. I do not know his surname, and also Hermogenes, whose surname I do not know.
Q. Does that fellow Guillermo also work for Mr. Picó?
A. Yes sir.
Q. That is all.

Further cross-examination by COUNSEL FOR DEFENDANT:

Q. Do you think that the Chinaman was exhausted simply because he kept quiet and said nothing?
A. Yes sir.
Q. And for that reason you thought he was exhausted?
A. Yes sir.
Q. That is all.

Further questions by the COURT:

Q. Have you any other reason to believe that the Chinaman was in a weak condition?
A. No sir.
Q. Please explain the condition in which the Chinaman was when he arrived at the house.
A. I did not examine his body, but simply noticed that he did not speak.
Q. How far were you from him when he arrived there?
81 A. I was very close to him, about three feet from him.
Q. Did his face have the appearance of that of a sick or healthy man?
A. He looked like a sick man and it was noticeable on his face.
Q. Has anyone spoken to you about the condition in which this Chinaman was at the time?
A. No sir.
Q. Did you see the Chinaman lie down at that place?
A. Yes sir.
Q. What did they do to him after they put him there?
A. Nothing more, because how could they do anything else to him if he was completely exhausted.
Q. Did he move after lying down?
A. No more.
Q. Was he alive?
A. Yes sir.
Q. And how did you know that?
A. Yes sir, because when we took him upstairs he was still alive.
Q. That is all.

ANACLETA MAGAS, having been first duly sworn, testified as follows:

I am a native of Palanan, a resident of Malunó, Ilagan,
82 Province of Isabela, married, age unknown.

Direct examination by COUNSEL FOR THE GOVERNMENT:

Q. Where were you on the evening of the 1st of March of this year?
A. At the stable.
Q. At the stable of what house?
A. Of Mr. Picó's house.
Q. Where was that house?
A. In the hacienda itself.

Q. What hacienda is that?
A. Mr. Picó's.
Q. Do you mean the hacienda of Malunó?
A. Yes sir.
Q. Why were you then at Mr. Picó's house?
A. Yes sir, because we were taking care of his horses.
Q. Who were you?
A. My husband and myself?
Q. What is your husband's name?
A. José Balayang.
Q. Then Mr. Picó was your employer, was he not?
A. Yes sir.
Q. And who is Mr. Picó?
A. That gentleman (indicating the accused Juan Picó).
Q. Do you remember whether on the evening of the 1st of March of this year anything unusual happened at the house?
83 A. Yes sir.
Q. What was it?
A. On account of the Chinaman.
Q. What Chinaman? Please state what happened.
A. The Chinaman upon his arrival at the house——(witness interrupted).
Q. How did the Chinaman arrive at the house?
A. Mr. Picó and others picked him up.
Q. How did the Chinaman arrive at the house?
A. They went and caught him at the house of Eulogio Castellanes.
Q. But did the Chinaman arrive at the house walking, or what?

DEFENCE: I object to the question.

Q. How did the Chinaman arrive at the hacienda building?
A. He was accompanied by Mr. Picó and others.
Q. And in what manner did he arrive at the house?
A. My husband was carrying him.
Q. In what manner was he being carried?
A. He had hold of him under the armpit.
Q. While the Chinaman was at that place, did you see him?
A. Yes sir.
Q. And what happened afterwards?
A. He was lying down.
Q. Where?
A. On the steps of Mr. Picó's house.
84 Q. And what happened to him while he was there?
A. He struck him again with the but end of the gun.
Q. Who?
A. Mr. Picó.
Q. Whom did he strike?
A. The Chinaman.
Q. Why do you say that he struck him with the but end of his gun?
A. Because I saw him.
Q. So you mean to say that you saw him with your own eyes?
A. Yes sir.

Q. Where were you when Mr. Picó struck the Chinaman with the but end of his gun?

A. I came down from the house and was right on the road.

Q. And how far from the Chinaman were you then?

A. About six feet.

Q. Are you sure that you saw Mr. Picó strike the Chinaman with the but end of his gun?

A. Yes sir.

Q. And where is the Chinaman now?

A. He was buried at Malunó.

Q. And why was he buried?

A. Mr. Picó had him buried.

Q. Why?

A. I do not know.

85 Q. Was he dead or alive?

A. He was dead.

Q. That which you claim you saw, at what time did it happen. Was it during the day or at night? I mean when Mr. Picó struck the Chinaman?

A. I cannot state definitely what time it was.

Q. You say that the Chinaman died?

A. Yes sir, he is now dead.

Q. When did you hear that he had died?

A. About four o'clock.

Q. At four o'clock that same night?

A. Yes sir.

Q. At four o'clock in the morning you say the Chinaman was dead?

A. Yes sir.

Q. You say that your husband is a mute?

A. Yes sir.

Q. What is his name?

A. José Balayang.

Q. How long have you been married to him?

DEFENCE: I object to the question as incompetent and immaterial.

COURT: Objection overruled.

DEFENCE: With our exception.

A. For about nine years.

Q. Do you and your husband communicate your thoughts

86 to each other?

DEFENCE: I object to the question as incompetent, irrelevant and immaterial.

(Prosecution insists and states reasons.)

(The Court directed that that part of the testimony objected to by counsel for the defence as incompetent and immaterial be stricken out.)

Q. That is all.

Cross-examination by Counsel for Defendant:

Q. You say you were on the road when you saw Mr. Picó strike the Chinaman?
A. Yes sir.
Q. You mean the road in front of the house?
A. Yes sir.
Q. The hacienda building is a big house, is it not?
A. Yes sir.
Q. And it faced to the west?
A. Yes sir.
Q. And there is a big lot of ground around it?
A. Yes sir.
Q. I understood you to say that you and your husband were in charge of Mr. Picó's horses?
A. Yes sir.
Q. That stair where you claim you saw the Chinaman, where is it located?
87 A. Facing the church on the east.
Q. You mean on the eastern side of the house?
A. Yes sir.
Q. And the house is just as big as this court-house here, is it not?
A. Yes sir.
Q. And the stairs are in the center on the eastern side of the house?
A. Yes sir.
Q. And when you saw the Chinaman near the staircase, who else was there?
A. Anacleto Duarte, my husband and two other boys.
Q. Are those all the persons you saw near the staircase?
A. Yes sir.
Q. Please state here the distance between the house and the road in front of the house where you live.
A. About a fathom and a half.
Q. Do you mean to say that the width of the ground between the house itself and the road is only one yard and a half?
A. I mean one fathom and a half.
Q. Why did you come down from the house that night?
A. Yes sir, because there was a noise and I went out to see what it was.
Q. And did you not see any other persons except those you have just mentioned?
88 A. No sir.

Q. That is all.

Examination by the COURT:

Q. What was the Chinaman doing when you saw Mr. Picó strike him with his gun?
A. He was lying down.
Q. Do you mean on the road?
A. Yes sir.

Q. On what part of the body did he strike him?
A. On the left side.
Q. Did the Chinaman cry?
A. No sir.
Q. When the Chinaman was still on the road and when he was struck by Mr. Picó, was he still tied?
A. I did not notice, sir.

Redirect examination by the District Attorney:

Q. While you were——. I will not ask you any more.

Jose Balayang (Deaf and Dumb).

PROSECUTION: This witness is deaf and dumb and I wish that the court would permit me to use his wife, with whom he has lived about nine years, as an interpreter, she being the
89 only one who can faithfully interpret his thoughts.

DEFENCE: I object to the wife of the witness being used as an interpreter for the reason that she is also a witness for the prosecution, and we will now offer the mother of the witness, who is here, to interpret what he has to say, he having lived with her since childhood. This woman will not be a witness for either party in this case.

COURT: Objection sustained, and it is ordered that the mother of the mute be used as interpreter, as requested by the defence, without any objection on the part of counsel for the government.

DEFENCE: The defence objects to the testimony of the witness José Balayang for the reason that his testimony has been obtained by means of promise of reward and other unlawful means, as heretofore alleged in my motion regarding the competency of the witness Francisco Baquiran.

COURT: The court denies and overrules the motion of the defence for the same reasons before given, namely, that the relation of co-defendant between the witness and the accused no longer exists, the complaint as to the former having been dismissed upon the preliminary investigation, and there is no evidence whatever before this court, with the exception of the mere statement contained in the motion. There is no testimony in this court to the effect that the statements of these witnesses have been secured by intimidation or promise of reward or immunity or any other un-
90 lawful means. If it should develop during the course of the examination that these witnesses have been induced to testify by means of promise of reward, deceit or any other unlawful means, the court will strike out the testimony of the witnesses mentioned in motions recently presented by counsel for the defendant.

DEFENCE: With our exception.

The Court asked a certain question of the previous witness to which the defence, or rather counsel for the accused, objected.

MARIA DEL PILAR, having been first duly sworn to faithfully interpret the testimony of witness José Balayang, was asked by the

court to find out from the witness whether he fully understood the nature of an oath, and the question was interpreted by her to the entire satisfaction of the court.

JOSE BALAYANG, having been first duly sworn, testified as follows:

I am a native of Palanan, a resident of Malunó, Province of Isabela, twenty years of age (this is undoubtedly a mistake made in transcribing testimony; undoubtedly he is thirty years of age, as testimony shows he has been married about nine years), married, and at present employed to look after Mr. Picó's horses.

91 Direct examination by the District Attorney:

Q. Have you ever seen this man here (indicating the accused)?

DEFENCE: I object to the question as irrelevant.
COURT: Objection sustained.

Q. Did you ever see a Chinaman in Malunó?
A. Yes sir, I have.
Q. Do you know whether anything happened to the Chinaman?
A. I have seen something but nothing more than see it.
Q. Ask him what he saw?
A. I saw the Chinaman dead.
Q. What I want to know is what happened to the Chinaman.
A. After he was struck with the gun he was taken into the house, and once there he lay down.
Q. State who struck the Chinaman with the gun?
A. Mr. Picó.
Q. Ask him to state in what position the Chinaman was when Mr. Picó struck him with the gun.
A. He was lying down.
Q. Were all the parts of his body free when Mr. Picó struck him with the gun?

DEFENCE: I object to the question as leading.
COURT: Objection overruled.

WITNESS: At first he walked up to the main stairs of the house.

92 Q. My question is whether the various parts of the body were free or not.
A. The arms were tied.
Q. Only the arms, or other parts of the body as well?
A. He was tied around the neck and the elbows were tied together.
Q. Who tied him up?
A. (The witness walked out and called a man whom the court ordered out of the room.) (The witness did not answer.)
Q. Who ordered you to tie the Chinaman?
A. Mr. Picó.

Q. Who directed that the Chinaman be tied?
A. Mr. Picó.

Q. That is all.

Cross-examination by Counsel for Defendant:

Q. Who tied the Chinaman?
A. I dragged the Chinaman?
Q. Where did you drag him?
A. Out of the house.
Q. You mean out of the house of Castellanes.
A. Out of the house of Castellanes.

Q. That is all.

NICASIO CLARAVALL, having been first duly sworn, exhibiting certificate of registration F187416, testified as follows:

93 I am a native and a resident of Ilagan, Province of Isabela, 35 years of age, married, and a physician by occupation.

Direct examination by the District Attorney:

Q. Do you hold any municipal office now?
A. Yes sir.
Q. What office?
A. I am president of the municipal board of health.
Q. Of what town?
A. Of Ilagan, Isabela.
Q. How long since?
A. Since the 1st of January.
Q. Of what year?
A. Of this year.
Q. Prior to that were you president of the municipal board of health of any other town?
A. Yes sir.
Q. Of what town?
A. Of the same town.
Q. In what year.
A. From July, 1905, until the latter part of the year 1906.
Q. Have you studied in any college?
A. Yes sir.

94 Q. What subjects have you studied?

A. In the University of Santo Tomas the preparatory course in medicine and first year in medicine, second course in anatomy, first and second courses in physiology and hygiene. In the University of Barcelona I studied general pathology, special therapeutics, pathological anatomy, first course medical clinics, first course surgical clinics, infantile clinics and obstetrics.

Q. Did you ever have any experience in examining wounds, contusions, etc., upon the bodies of persons who died a violent death?
A. As to wounds and contusions, when I was president of the

municipal board of health in the year 1905, I examined the body of a deceased person and then testified as a witness in this court in a case of homicide.

Q. So that you have heretofore examined wounds, contusions and dead bodies?

A. Yes sir, dead bodies in the hospitals.

Q. Do you remember whether some time in March of this year you went to Malunó, within the jurisdiction of this town of Ilagan?

A. Yes sir.

Q. When?

A. It was on the 5th day of March.

Q. Of this year?

A. Yes sir.

95 Q. Why did you go there?

A. Because on the 4th of March I received a communication from the justice of the peace of this town asking me to disinter and examine the body of a Chinaman who had died at Malunó, and on the morning of the 5th I received another communication, from the district superintendent of health, Mr. Toribio, referring to me another communication from the same justice of the peace, and directing me to disinter and examine the body and then make my report to the court.

Q. Did you carry out that order?

A. Yes sir.

Q. Did you go to Malunó?

A. Yes sir.

Q. Were you alone?

A. I went to Mulanó with the justice of the peace, his clerk, the municipal president, a policeman, two Chinamen, two guides; on the road we were met by Mr. Wagemblass, superintendent of schools, and when we had traveled half the distance we were met by Dr. Sorarain and Mr. Tebes and all of us together went to Malunó. Mr. Banta was also in the party.

Q. And when you arrived at Malunó, what did you do?

A. We arrived at Malunó at a little after twelve.

Q. Of what day?

A. Friday, the 5th of March.

Q. Of this month?

A. Yes sir, of this month.

96 Q. What else?

A. We arrived there and as it was rather late we rested for a while and then had dinner. After dinner I told the lieutenant to call some persons to fix up a table and fetch some water so that when the body was disinterred it could be washed, and the table was for the purpose of making the examination.

Q. Who was that lieutenant to whom you refer?

A. Francisco Baquiran.

Q. What is he lieutenant of?

A. He is municipal lieutenant of Malunó.

Q. And then what did you do?

A. After dinner we rested a while, because they claimed that they

could not get the table immediately. At four o'clock, more or less, I was notified that the people were there and the water was ready; they also brought a lancape (native bamboo bed) which was used as a table, and then I told the sanitary inspector Banta to proceed to disinter the body and about five o'clock we all went there, accompanied by Dr. Sorarain, the municipal president, the justice of the peace and his clerk, and Mr. Tebes.

Q. And what did you do then?

A. We arrived at the place and the people were still digging up the body and after the body was disinterred, about five o'clock, it was taken out of the grave; and it was covered with dirt, it having been buried without any wrappings around it; the body was then placed upon the lancape (native bamboo bed) and carefully washed with a solution of sublimate, which I took with me. All the dirt was removed from the body and with all the necessary precautions it was thoroughly cleaned and I noticed that—— (Witness interrupted.)

97

Q. After washing the body did you recognize the man?

A. First of all he was stripped of his clothing. He wore a shirt and wide drawers. Afterwards he was again washed and the body was perfectly clean.

Q. Did you examine the body?

A. Yes sir. It was examined.

Q. Please state the result of your examination.

A. After the body was thoroughly cleaned I noticed that the head was in its normal condition, without any indentation of the bones; some of the hair had fallen out; on the face, his left eye was half open; his tongue was sticking out of his mouth about two or three centimeters; he had certain spots on the neck; the spots on the neck were livid; on the left shoulder and upper left arm the body presented several spots also livid, and on the upper right arm he had some blood clots; on the right side, about three or four centime-rs from the breast, the body presented several black spots; on the lower abdomen several livid spots; on the back of the body, in the lumbary region and near the spinal column there were several black and blue spots, and the rectum was *proceeding* about four centime-rs more or less.

98

Q. Did you make an autopsy on the body?

A. After this we proceeded to open the thoracic region and examined the same. The pharynx was in a normal condition; the lungs had a sort of greenish color; there were several blood clots between the thoracic walls and on the pleura of the right side.

Q. What was the color of the blood?

A. It was black, but he also had some red coagulated blood as the result of the cutting of the muscles and bones when the thoracic region was opened. We took out the heart, which was of a pale color and completely empty.

Q. Are those the only things which you saw on the body of the deceased?

A. Yes sir.

Q. Was the lieutenant of the barrio present when you people disinterred the body?

A. He was present because he was there with the people from Malunó who came to help us disinter the body.

Q. Do you know the name of the Chinaman?

A. According to the official notice I received, the name was Go Siengco.

Q. Did the lieutenant of the barrio say whether or not he was the same Chinaman Go Siengco?

A. I did not ask him.

DEFENCE: I object to that line of testimony.

COURT: Objection sustained.

99 PROSECUTION: Those spots which you noticed on the body of the deceased, can you state how they were caused?

A. The spots on the neck, on the left shoulder, on the upper left arm, on the right shoulder and lower abdomen, were merely such livid spots as you would usually find on all dead bodies in a state of decomposition. The body had been buried four days, and on account of their color they might be taken for spots produced by contusions made with a blunt instrument.

Q. And how about the other spots, can you state how they were caused?

A. The black spot on the right side, those on the upper right arm and lumbary region, on account of their red-blue color, are, frankly speaking, black and blue spots caused by contusions made with a blunt instrument. The fact that such spots are even visible four days after the body was buried shows that the contusions must have been rather serious.

DEFENCE: I object to the latter part of the witness' answer as not being a proper answer to the question propounded.

COURT: Objection overruled.

DEFENCE: With my exception.

PROSECUTION: You have stated here that the heart was discolored and completely empty. Can you tell us what the cause of that state of vacuity of the heart was?

A. The state of vacuity of the heart indicated that the
100 Chinaman died as the result of asphyxia, that is to say, paralysis of the breathing, thoracic muscles.

Q. State positively if you know what the cause of the death was.

A. Undoubtedly the Chinaman died as the result of the contusions on the spinal column and on the lumbary region, which caused paralysis of the spinal nerves and also paralysis of the breathing, thoracic muscles and the abdominal muscles. The paralysis of the breathing, thoracic muscles, together with small blood clots, caused by a slight hemorrhage, was the ordinary result of the contusion on the right side, which caused inertia of the lungs and brought about asphyxia, as is further shown by the fact that the tongue was sticking out of the mouth and the left eye was half open; also paralysis of the abdominal muscles caused a relaxation of the

sphincter and the protuberance of the rectum, all of which, together with the dispirited condition of the Chinaman, who was unable to breathe, brought about death as a necessary result.

Q. How do you explain the fact that the tongue was sticking out of the mouth two or three centimeters?

A. That was due to the efforts of the Chinaman to breathe.

Q. And the fact that he had the left eye half open?

A. That was on account of the pain caused by the contusions resulting from the blows.

Q. When you took the body out of the grave, was the left eye still open?

A. Yes sir.

101 Q. And did you notice that his tongue was sticking out of his mouth?

A. Yes sir.

Q. I understand from the testimony that you saw spots on the body of the Chinaman?

A. Yes sir.

Q. I understand you to say also that some of these spots were due to contusions?

A. Yes sir.

Q. And that the contu-ions, in your judgment, had been caused by a blunt instrument?

A. Yes sir.

Q. I also understood you to say that as the result of the blows with a blunt instrument the Chinaman died?

A. Yes sir.

Q. So that the Chinaman died as the result of the blows?

A. Yes sir, in the manner in which I have just explained.

Q. That is all.

Cross-examination by COUNSEL FOR DEFENDANT:

Q. How many post-mortem examinations have you made during your practice as a physician?

A. I cannot say exactly. While in college it was almost an everyday occurrence.

Q. Do you mean to say that you have had considerable experience in medicine and medical clinics?

102 A. Fairly so, but I would not say considerable.

Q. Now then, how many examinations have you made of bodies subsequently disinterred as the one in question?

A. This is the first one.

Q. This is the first post-mortem examination in the true sense of the word that you have ever seen or made yourself, is it not?

A. This is the first time I have made an examination of this kind.

Q. And did you make that examination on the 5th day of March.

A. Yes sir.

Q. Of this year?

A. Yes sir.

Q. After five o'clock was it not?

A. Yes, at half past five.
Q. And four days after the body had been interred?
A. Yes sir.
Q. How long did it take you to make that examination?
A. About an hour, more or less.
Q. Did you open the body yourself?
A. I had a sanitary inspector with me who opened the body and I was always there. At times I was in front, that is to say, near the body of the deceased.
Q. And with what kind of an instrument did you open the body?
103 A. We had nothing but a costotomo (a big pair of curved shears or scissors strong enough to cut ribs and bones), a pair of pinchers, one pair of shears and a bistoury.
Q. I will ask you again with what kind of an instrument did you open the body of the deceased.
A. I first marked the part that should be cut with the bistoury—— (Witness interrupted.)
COURT: That is not an answer to the question. The question is with what instrument you opened the body?
A. With a bolo (laborer's knife common to these Islands).
Q. Was it an ordinary bolo?
A. An ordinary bolo.
Q. Can you state here the length of the knife with which the body was opened?
A. It was about fifteen inches long.
Q. And who did you say cut the body open?
A. José Banta, the sanitary inspector.
Q. How did Banta manage to open the body with that knife?
A. He did all that was possible in order to cut the bones.
Q. I would like to know what means he employed to open the body of the deceased?
A. He used a bolo.
Q. Was the body opened from the throat down to the lower extremeties?
A. No sir; only from the neck to the stomach; only the thoracic cavity.
104 Q. And how did you open the body from the throat down to the stomach—by cutting it?
A. I traced with the bistoury the part which had to be cut open, describing a circle, in order to raise it.
Q. And was he able to cut the ribs with nothing but the bolo?
A. Yes sir.
Q. Then it must have been necessary for him to strike pretty hard in order to cut the bones?
A. No sir, because the bones are not so hard after all.
Q. But if he used a bolo he undoubtedly had to strike pretty hard in order to cut the bones of the ribs?
A. Yes sir.
Q. In the medical hospitals in which you have been, did you ever see a body opened in that manner?

A. We generally used a saw.

Q. I understood you to say that you had a bistoury?

A. Yes sir.

Q. And why did you not use that?

A. The bistoury is a knife about the size of a penknife and is not fit to cut bones with, only the muscles.

Q. I also understood you to say that you had a pair of shears?

A. Yes, but these shears were not sharp, but blunt. They are blunt shears which are used for the purpose solely of raising the parts of the body after the bones are cut.

105 Q. Did you also have a saw?

A. No sir, we did not have any. We had none.

Q. I also understood you to say that some of the blood clots which you found on the body of the deceased had been caused when the body was cut open?

A. Yes, and for that reason the clots were red; recent coagulations.

Q. When a person has been dead for four days is it not true that all the blood is more or less coagulated?

A. Yes, some times, but in any event the blood will be coagulated in the natural ducts and arteries.

Q. The condition in which you found the body, that is to say, in a state of vacuity, is that the same condition in which all bodies are four days after they have been buried?

A. No sir.

Q. In what condition would the heart of a person be four days after his death, that is to say, when a person dies a natural death; would it be possible to find any blood in the heart?

A. In what condition.

Q. Four days after the person died.

A. It all depends on the kind of disease of which he died.

Q. Is it not a fact that when a person dies, whatever the cause may be, the blood leaves the heart immediately?

A. Not always, because there are certain diseases, for in-

106 stance, in a case of heart failure, where even after death blood clots may be visible on the right arm or on the left or on the heart itself.

Q. Please enumerate the diseases in which after the death of the person the blood remains in the heart.

A. Any of the diseases affecting the heart itself, for instance, valvular insufficiency.

Q. Do you mean a defect in the valves?

A. Yes sir.

Q. What is the name of that disease in which after the death of a person the blood remains in the heart?

A. Heart failure or cardiac affection, all involving an injury to the valves of the heart.

Q. Are there any other diseases in which after the person dies the blood remains in the heart?

PROSECUTION: I object to that line of testimony.

COURT: Objection overruled.

A. An injury to the lungs, for instance.

Q. Now the spots that you noticed on the body of the deceased when you examined the same caused the blood to issue from the heart?

A. A result of the contusions was the paralysis of the breathing, thoracic muscles; this paralysis caused asphyxia and as a result of his efforts to breathe the blood naturally flowed out but could not flow back to the heart because the breathing muscles were paralyzed.

107 Q. Do you mean to say that the vacuity of the heart was the immediate result of the spots which you found on the body of the deceased?

A. I have already said that some of the spots were due to the state of decomposition of the body and that the other spots were produced by contusions.

Q. My question is whether the state of vacuity of the heart was due to the spots which you say you found on the body?

A. It cannot be. I am unable to say exactly because those spots were the immediate result of the contusions, and, as I have said before, the said contusions being of a serious nature, the spots were still visible four days later; and the other spots, the livid spots to which I have referred, were due to the natural decomposition of the blood of the deceased. The blood coagulates in the tissues and produces a natural discoloration.

Q. Then the livid spots were caused by the decomposition of the body, were they not?

A. I cannot account for it in any other way, the body having been buried for four days.

Q. Please state again on what part of the body you found those livid spots.

A. On the neck, on the left shoulder, on the right shoulder, on the upper left arm and lower abdomen.

Q. The black and blue spots, where were they?

108 A. On the right side, about three or four centimeters from the breast; also on the upper right arm and on the lumbary region near the spinal column.

Q. What was the effect produced by those black and blue spots which you found on the body of the deceased? What was the effect of the decomposition of the body on those black and blue spots to which you have referred?

A. The decomposition of the body had no effect upon the black and blue spots, which ordinarily preserve their original shape and appearance until they decay with the rest of the body.

Q. Can you recognize those black and blue spots on the body of a person who has been buried for four days the same as you could recognize them on the body of a person immediately after they were caused, and would you also be able to say how the injuries were caused and the effect they had upon the body?

A. Yes sir, as they have now been recognized, by the color.

Q. Then you could explain and account for those black and blue spots four days after the body had been buried and can also determine when the injuries were inflicted?

A. Yes sir. They can be very easily distinguished from the ordinary spots caused by the decomposition of the body.

109 Q. Can you explain the condition and the nature of a wound four days after it has been inflicted the same as you could immediately after it was caused?

A. What kind of a wound?

Q. Any kind of a wound caused by a sharp instrument.

A. Yes, I can, but if it is a case of a wound and a contusion, it all depends on the extent and nature of the contusion.

Q. If you saw a wound four days after it was inflicted and four days after the body of the deceased was buried, the body being in the same state of decomposition which you have described here, could you say how the wound was caused and explain it the same as you could if you saw the wound immediately after the same was inflicted?

A. Certainly. Take, for instance, this particular case, in which the effects of the wounds could be determined by the symptoms which the body presented.

Q. When you examine a wound or spot of this kind, what do you take into consideration for the purpose of determining with what instrument the wound is caused and the effect of the same upon the body of the deceased?

A. First of all, the place where the wound was inflicted and then the color and shape of the same.

Q. And you would not take into consideration anything else?

A. The general condition of the body.

110 Q. Is there any disease by the name of "black and blue spots" known in medicine?

A. No sir, not that I know of.

Q. Do those words "black and blue spots" have any other meaning and are they used in any other sense?

A. "Black and blue spots" always mean spots produced by a contusion, that is to say, spots caused as the result of a contusion.

Q. Can you state positively whether a particular black and blue spot on the body of a person who has been buried four days was caused in a given manner and with a particular class of instrument?

A. The shape of the spot may determine the shape of the instrument.

Q. Could you determine that positively?

A. You can tell more or less from the form of the contusion and the shape of the spot.

Q. Then you could say whether or not a black and blue spot, after the body had been buried four days, was caused by a fall or by a blow?

A. Yes sir, I could, because if the spot was due to a fall it would be irregular in shape.

Q. And is it not possible that a blow may also cause a contusion or spot of an irregular shape?

A. Yes, but you can always tell more or less the shape of the instrument with which it was caused.

111 Q. But you would have to see the instrument first, would you not?

A. Even if I did not see the instrument I could say more or less what the form or shape of the instrument was.

Q. Now suppose, for instance, if a man should fall down from this window and should strike a stone or a piece of hard wood when he comes in contact with the ground, what sort of a spot would be produced by the injury?

A. It depends on the shape of the object struck. If the same is of a circular shape, why the spot would be more or less of the same shape, and if the body should strike a long piece of wood, the shape would be rather long and narrow.

Q. Then the shape of the spot is what determines whether the same is a livid or a black and blue spot?

A. The color is what determines it.

COURT: What is the difference between a livid and a black and blue spot?

A. The livid spot is of a dark blue color, whereas the other one has a red-violet color.

Q. Suppose a man falls down from this window and strikes a stone down on the ground—— Of the black and blue spots which you found on the body of the Chinaman examined by you, can you state positively whether those spots were produced by the Chinaman falling or by blows with some instrument and whether this instrument was blunt or not?

112 A. They have more or less the shape of the but end of a gun.

Q. What other parts of the body did you examine, besides the heart and the lungs?

A. We examined nothing more for the reason that we could not stay any longer and it was too late.

Q. Was it so dark that you could not continue the examination?

A. It was not very dark but the night was about to set in and when we arrived at the place where we took the horses it was night.

Q. It was then so dark that you could not see clearly and therefore you had to stop the further examination of the body?

A. No sir.

Q. Do you know at what time the examination was stopped?

A. About half past six.

Q. Did you make what is known to the medical profession as a complete autopsy?

A. Not a complete autopsy. We merely made an external examination of the body and then proceeded to examine the thoracic organs, which are the most important organs of a human being.

Q. I understood you to say that you had found no wounds at all on the body of the deceased?

A. No wounds, no sir.

113 Q. Are you a licensed physician?

A. I am a surgeon.

Q. Are you a physician licensed as required by the laws of the Philippine Islands?

A. I am a surgeon by the University of Santo Tomas and have been duly registered as such by the Medical Board of Examiners of the Civil Service.

Q. Do you hold a license as a surgeon or as a physician?

A. As a surgeon.

Q. Have you a certificate issued by the Board of Health of the Philippine Islands?

A. Yes sir.

Q. A license to practice the medical profession?

A. Yes sir.

Q. At the time you examined the body of the Chinaman, did you make any written report of the examination?

A. Yes sir. I submitted the same to the court, stating the result without going into details.

Q. Did you submit that report to the justice of the peace in the preliminary investigation held in the case of United States versus Juan Picó?

A. Yes sir.

Q. I will now show you a document attached to the record as made up in the court of the justice of the peace in the case of
114 the United States versus Juan Picó and will ask you to state what it is.

A. That is the certificate issued by me.

Q. That certificate shows the result of the examination made by you of the body of the deceased Chinaman?

A. Yes sir.

Q. The signature at the bottom of this document, whose signature is it?

A. It is my signature.

Q. That is all.

JOSÉ BANTA, being first duly sworn, testified as follows:

I am a native of San Roque, Province of Cavite, and a resident of Ilagan, Province of Isabela, 70 years of age, married, and a sanitary inspector by occupation.

Direct examination by the District Attorney:

Q. Have you ever held any municipal office?

A. Yes sir.

Q. What?

A. Sanitary inspector here and president of the municipal board of health of Naguilian in 1903.

Q. And here in this town?

A. Sanitary inspector.

Q. How long have you been such sanitary inspector?
115 A. Less than a year.

Q. And at Naguilian?

A. One year and a few days.

Q. What office did you hold then?

A. President of the Board of Health.

Q. During the Spanish times, were you ever in any hospital working as a sanitary inspector?

A. Yes sir.

Q. For how many years?

A. For more than three years since I was in the navy.

Q. So that you have worked in a hospital, have you not?

A. Yes sir.

Q. Do you have any experience at all?

A. Yes sir.

Q. I mean in connection with the examination of dead bodies, contusions, etc.?

A. Yes sir. During the time I was in the hospital I attended all the post-mortem examinations made by Dr. José Gutierrez, who was the military doctor of the hospital.

Q. Did you ever attend any post-mortem examination made at the hospital?

A. During the four months that I worked for the physician of the navy he saw that I was not afraid of the job, and he asked me to assist him in the disinterment and examination of a body which had been buried for seven days.

116 Q. Did you ever—— (interrupted by the witness).

A. As I was not afraid of the work the doctor did not want to have anyone else help him but me.

Q. Have you ever made any examination of contusions on the bodies of human beings?

A. Many times.

Q. Contusions also?

A. Yes sir.

Q. And dead bodies too?

A. Yes sir, in the same hospital.

Q. During the time you were acting as president of the board of health of Naguilian, did you ever make any examinations of contusions and dead bodies?

A. Yes sir. I made some examinations of that kind when Mr. Alzona was prosecuting attorney of the province.

Q. Then you must have had considerable experience?

A. Yes sir.

Q. Have you had any experience in the examination of contusions and wounds upon the bodies of persons who have died a violent death?

A. Yes sir.

Q. Do you remember having gone to Malunó with Nicasio Clara?

A. I remember perfectly well that I went there with the president of the board of health, the local president and the justice of the peace of Ilagan, and some members of the police.

117 Q. When were you at Malunó?

A. I do not remember exactly. I think it was on the 2nd day of the month, Saturday.

Q. Don't you remember exactly the date?

A. I do not.

Q. And you went with Dr. Claravall, did you not?
A. Yes sir.
Q. What did you do there?
A. We went there for the purpose of disinterring a body.
Q. Whose body?
A. The body of a Chinaman.
Q. Did you disinter the body, did you?
A. Yes sir.
Q. What was the name of the cemetery?
A. This was a place near the cemetery of Malunó, but outside of the cemetery.
Q. Were you present when the body was disinterred?
A. Yes sir. I was the one who got into the grave.
Q. You said that the body in question was that of a Chinaman?
A. Yes sir.
Q. Please state the condition of the body of the Chinaman when disinterred.
A. We found that the body was dressed in its ordinary clothing, without any additional wrappings.
Q. How was the body dressed?
118 A. It had on an undershirt, a coat and trousers.
Q. Did you take the Chinaman out of the grave?
A. Yes sir.
Q. And what did you do after you took him out of the grave?
A. I washed him.
Q. Are you sure that it was the body of a Chinaman?
A. Yes sir.
Q. And after the body was washed, what did you do?
A. Mr. Nicasio then examined the body and traced with his bistoury the part of the abdomen which had to be opened and told me to open the thoracic cavity, as the physicians call it, with an ordinary bolo, which was the only instrument available. With the point of the bolo I cut the ribs, using a mallet to drive the knife in.
Q. What do you mean by a mallet?
A. An ordinary carpenter's mallet.
Q. Was that after the body was thoroughly washed and examined?
A. After the body had been examined.
Q. Do you mean to say that the doctor examined the body before it was actually opened?
A. Yes sir.
Q. And did you also see the body?
A. Yes sir, because I myself washed the body and removed the undershirt and trousers from the body of the Chinaman.
119 Q. After the body was thoroughly washed and before the same was opened, did you notice anything particular on the body?
A. Yes, I saw some black spots.
Q. On what part of the body did you see those spots?
A. On the right shoulder and armpit; also on the back of the

shoulder and under the right armpit; and also other spots on the two arms. On the left he also had a spot on the left shoulder and immediately below the shoulder; also on the point of his nose. He also had a string or cord around his neck and the abdomen was swollen.

Q. Did you notice anything particular on the face of the corpse?

A. Yes. The tongue was sticking out about two centimeters.

Q. What else did you notice?

A. The left eye was half open and the right completely closed.

Q. Then you acting by order of Dr. Claravall opened the body of the deceased by means of a bolo?

A. Yes sir.

Q. And what did you see afterwards?

A. I saw the heart and the blood.

Q. Did you notice anything particular?

A. Yes, on the right side of the heart there was some black blood.

120 Q. Those spots that you saw, can you account for their existence?

A. They were due to a blow.

Q. Do you mean to say that they were the result of blows?

A. Yes sir.

Q. With what kind of an instrument, a sharp or a blunt instrument?

A. With a sharp instrument.

Q. You mean to say by a blunt instrument, do you not?

A. Yes sir.

Q. And on that particular part of the body where you saw the spots such blows would upon that part of the body necessarily cause the death of the Chinaman?

A. It was sufficient to kill the Chinaman, first, because of the severity of the blows, and, secondly, on account of the lack of proper care.

Q. How many times have you been to Malunó?

A. Only once.

Q. Was that the first and only time?

A. Yes sir.

Q. With whom did you go?

A. With Nicasio Claravall, the president of the town and the justice of the peace.

Q. What people were present when the body of the Chinaman was washed?

121 A. Dr. Sorarain and the physician of Malunó.

Q. What is the name of the doctor of Malunó?

A. Tebes I think.

Q. How many persons were you in all?

A. The lieutenant of the barrio and other persons also went there to disinter the body. They assisted in disinterring the body and the body was placed on a native bamboo bed.

Q. Are you sure that you saw those spots on the body of the deceased?

A. Yes sir.
Q. With your own eyes?
A. Yes sir; because I was the man who washed the body and cut the same open, as I was not afraid of that kind of a job.
Q. Can you state approximately the time of the day or night when the autopsy on the body was made?
A. I think it was after five o'clock in the afternoon.
Q. That is all.

Cross-examination by COUNSEL FOR DEFENDANT:

Q. At what depth was the body buried?
A. At a depth of more than one meter.
Q. Did you remove the dirt from the body of the deceased?
A. I removed with a piece of bamboo cane the dirt over the body of the deceased when the excavation had proceeded to about six inches from the body in order to avoid causing any injury
122 to the same with the spade.
Q. I understand you to say that you alone removed the dirt from the body of the deceased. Was there not some other person to help you?
A. Other persons assisted in disintering the body. I told them to dig into the ground near the grave and when the excavation reached the same level with the body of the deceased the dirt over the body was removed and when the excavation had proceeded to within six inches from the body, I, in order to avoid any injury to the same, carefully removed the remaining dirt by digging around the grave with a piece of bamboo cane. When the body was uncovered I took a spade and shoved it right under the shoulder and raised it up. I had to do this alone because nobody cared to help for the reason that the body was considerably decayed. The other spade was shoved right under the man's hips and then I called two men to lift them up and I took the body by the legs and with the assistance of the other two men placed the same upon the native bamboo bed, where it was subsequently washed.
Q. When the body of the deceased was opened at Malunó that 2nd of March, 1909, under the direction of Dr. Claravall who held the post-mortem examination, I understood you to say that you yourself opened the body following instructions given you by the doctor when the post-mortem examination on the body of the deceased Chinaman was held by Mr. Claravall; is that
123 true?
A. Yes sir.
Q. And did you cut the body open at the time the post-mortem examination was held by Mr. Claravall on that day?
A. Yes sir.
Q. And when the body was cut open what did you do?
A. Mr. Claravall told me to take out the heart.
Q. And did you take it out?
A. Yes sir; and he told me to open it.
Q. And did you take the heart out of the body?
A. Yes sir.

Q. How did you take the heart out of the body?
A. I did it by holding my hand in a horizontal position and delivered the heart to Mr. Claravall.
Q. Were any other incisions made?
A. Where?
Q. In any other part of the body?
A. No sir.
Q. I understood you to say that the abdomen had not been cut open; is that true?
A. I pointed out to him the point where the black spots were.
Q. (Question repeated.)
A. No, it was not.
Q. Do you know at what time, more or less, the post-mortem examination of the body was completed?
A. About half past five in the afternoon.

124 Q. That is all.

Redirect examination by the PROSECUTING ATTORNEY:

Q. Did you notice the nose of the deceased particularly?
A. Yes sir.
Q. What was the condition of it?
A. It was in its normal condition but there was a black spot on the upper part.
Q. How were the nostrils?
A. In their normal condition.
Q. Did you notice the rectum at all?
A. Yes sir.
Q. Was there anything unusual about it?
A. Yes, I noticed that it protruded.

Q. That is all.

Questions by the COURT:

Q. Do you have any opinion as to the cause of the death of the Chinaman?
A. Yes sir.
Q. In your opinion, what was the cause of the death of the Chinaman?
A. He died as a result of the blows and of fright.
Q. In what part of the body, in your opinion, were the blows inflicted which caused the death of the Chinaman?

125 A. The darkness of the blood around the heart and the paleness and dryness of the latter were caused by the excitement and fear of the Chinaman and death followed.

Q. How were those blows on the external part of the body to which you referred manifested?
A. The spots under the right armpit.

Q. That is all.

With the permission of the Court the witness NICASIO CLARAVALL was recalled by the defence for the purpose of being cross-examined.

Nicasio Claravall.

Cross-examination by COUNSEL FOR DEFENDANT:

Q. Please present to the court the title or license which you say was issued to you by the government permitting you to practice as a physician.
A. As a ministering surgeon only.
Q. And is that all the license you have?
A. Yes sir.
Q. And when was that license issued to you Mr. Claravall?
A. In the month of April of this year.
Q. Of this year only?
A. I should have said in the year 1908.
126 Q. And you have held that license for about a year now?
A. Yes sir.

Q. That is all.

PROSECUTION: The prosecution presents as a witness for the government Simeon Bayad who, although his name does not appear at the bottom of the complaint, as appears from the testimony of the other witnesses for the prosecution, must have some knowledge of the facts connected with this case, and in the interests of justice I desire to present him as a witness.

DEFENCE: I object for the reasons heretofore stated.

COURT: The court grants the motion of the district attorney and directs that the witness Simeon Bayad be sworn in and examined in this case, although his name did not originally appear at the bottom of the complaint.

DEFENCE: With our exception.

SIMEON BAYAD, having been first duly sworn, testified as follows:

I am a native and a resident of Ilagan, of the Province of Isabela, 39 years of age, married, and a harvester by occupation.

127 Direct examination by the DISTRICT ATTORNEY:

Q. Where were you on the evening of the 1st of March, 1909?
A. At home.
Q. In what part of the town do you live?
A. Near the church.
Q. What is the name of the barrio or of the place where you live?
A. Malunó.
Q. Do you mean to say the hacienda of Malunó?
A. Yes sir.
Q. Do you remember whether on that night you were called by someone?
A. Yes sir.
Q. And why were you called?

A. I do not know. The lieutenant sent for me.
Q. The lieutenant of what?
A. The lieutenant of Malunó.
Q. And did you go?
A. Yes sir. I did.
Q. Where did you go?
A. To the hacienda itself.
Q. What do you mean by the hacienda? Do you mean to say the hacienda building?
A. Yes sir; the hacienda building.
128 Q. Who lives there?
A. Mr. Juan Picó.
Q. And what happened after you arrived there?
A. When I arrived there I saw a Chinaman.
Q. What else?
A. That is all I saw.
Q. How was the Chinaman when you saw him?
A. He was lying down.
Q. Where?
A. Near the staircase.
Q. Whom did you meet here?
A. The lieutenant.
Q. What is the name of the lieutenant?
A. Francisco Baquiran.
Q. Who else?
A. Anacleto Duarte, Bienvenido Duarte, Hermogenes Ramos, the mute. That is all.
Q. And what happened then?
A. I saw nothing happen.
Q. And what happened to the Chinaman?
A. I saw nothing happen to him; all that I saw was that the four persons who were there picked up the Chinaman and carried him into the order room.
Q. Did they say anything to you?
A. Yes sir.
Q. What did they say to you?
129 A. The lieutenant told me, "you have got to watch that fellow."
Q. Did anybody else say anything to you?
A. Mr. Juan Picó gave the order to the lieutenant and the lieutenant transmitted it to me.
Q. In your presence?
A. Yes sir.
Q. Then you saw Mr. Picó there, did you not?
A. Yes sir.
Q. Where was Mr. Picó at the time?
A. He was in the dining room.
Q. And you alone watched the Chinaman?
A. And the other four men also, because that is the place where they all slept.

Q. But you actually watched the Chinaman?
A. I did.
Q. And what did you notice about the Chinaman?
A. I heard nothing except that he asked Hermogenes to furnish him with a sheet.
Q. Did you or did you not sleep there that night?
A. Yes, I did, because being a day laborer I was pretty tired.
Q. And when you woke up did you notice anything in there?
A. When I woke up about four o'clock in the morning I noticed that the Chinaman was dead.
130 Q. At that same place?
A. Yes sir.
Q. What place was that?
A. The order room.
Q. Was that in the hacienda building itself?
A. Yes sir.
Q. Were you the policeman?
A. Yes sir.
Q. Who was your chief as such policeman?
A. Juan Picó and the lieutenant.
Q. What connection had Mr. Picó with the hacienda?
A. He was the general superintendent.
Q. Was the lieutenant an employee of the hacienda?
A. Yes sir, because he is the clerk.
Q. In other words, the man who was actually in command of all of you there was Mr. Picó?
A. Yes sir.
Q. And when you noticed that the Chinaman was dead, what did you do?
A. When I woke up the general superintendent was there and noticed that the Chinaman was dead and told me to report the fact to the lieutenant.
Q. And what did you do?
A. Nothing.
Q. Did you or did you not report the death of the Chinaman to the lieutenant?
131 A. Yes sir.
Q. And what did the lieutenant do?
A. He immediately went to the hacienda building.
Q. And what happened then?
A. That is all I know.
Q. Did you go anywhere else after that?
A. Yes sir; I went to another place and the lieutenant and Juan Picó remained there and took charge of the Chinaman.
Q. At what time did you leave the place?
A. About nine.
Q. Nine what?
A. Nine o'clock in the morning.
Q. When you met the Chinaman near the staircase, he was lying down was he not?
A. Yes sir.

Q. Did you notice his condition particularly?

A. I did not, and I do not know from what he was suffering; all I know is that he was talking and lying on the floor.

Q. That is all.

Cross-examination by Counsel for Defendant:

COUNSEL FOR DEFENDANT: No cross-examination.

The District Attorney then presented as a witness the justice of the peace of Ilagan who conducted the preliminary investigation in the case in question, on account of the question raised by
132 the defence with reference to the two witnesses previously indicted.

COURT: Motion granted.

(The defence made no objection.)

LUIS EUGENIO, having been first duly sworn, testified as follows:

I am a native and a resident of Ilagan, Province of Isabela, 47 years of age, a widower, and justice of the peace of the municipality of Ilagan.

Direct examination by the District Attorney:

Q. Where you the justice of the peace of Ilagan on the 11th and 13th of March of this year?

A. Yes sir.

Q. Do you remember whether or not while acting as such justice of the peace there was a complaint filed with you against Francisco Baquiran and the mute José Balayang?

A. Yes sir. I do.

Q. A complaint for what crime?

A. For the crime of murder.

Q. Do you remember whether there was a complaint filed in this case?

A. Yes sir.

Q. If you saw that complaint could you say whether it was the same?

133 A. Yes sir.

Q. Please look at this complaint and state whether it is the same as the one filed with you.

A. Yes sir. It is the same complaint filed with me.

Q. Whose signature is that which appears on the complaint?

A. That is my signature, the complaint having been sworn to before me.

Q. What did you do after the complaint was filed?

A. I issued the warrant of arrest.

Q. And were the defendants arrested?

A. Yes sir.

Q. Who were the accused?

A. The lieutenant of the barrio, Francisco Baquiran, and the mute, José Balayang.

Q. Do you remember whether after the warrant was issued I filed a motion in your court?

A. Yes sir. I do.

Q. Do the motion papers appear in the case of the United States versus Francisco Baquiran et al.?

A. Yes sir. They are attached to the record.

Q. If you saw those motions, would you be able to identify them?

A. Yes sir.

Q. Please present the record and identify the motions filed by me in that case.

134 A. Yes sir. These are the motions filed by you as district attorney (showing to the court the motions attached to the preliminary investigation of the case).

Q. This motion is dated on the 13th, is it not?

A. Yes sir.

Q. What was the prayer of that motion?

A. You as district attorney asked the court to dismiss the case in order that the defendant might be used as a witness for the government.

Q. And what did you do as a judge?

A. I dismissed the case.

Q. When did you dismiss the case?

A. The same day the motion was filed the case was dismissed as to the mute, José Balayang.

Q. And where is the other motion?

A. Right here.

Q. And what was the object of that motion?

A. That the case be dismissed so that defendant Francisco Baquiran could be used as a witness for the government.

Q. And did you dismiss the case?

A. Yes sir.

Q. Have you the order of dismissal here?

A. Here it is.

Q. Whose signature is this one appearing at the bottom of this order?

135 A. That is my signature.

Q. And the signature on the order of dismissal?

A. That is my signature also.

PROSECUTION: I now introduce in evidence in this case the preliminary investigation in the case of United States versus Francisco Baquiran for murder and ask that the same be marked Exhibit "A" of the Government.

DEFENCE: Let Exhibit "A" of the Government be admitted in evidence, without objection on the part of the defence.

DEFENCE: The defence waives the cross-examination of the witness.

Questions by the COURT:

Q. When was that case against these men dismissed?

A. On the 13th of this month.

Q. Did you, subsequent to that date, send Francisco Baquiran to jail?

A. Immediately after the order of dismissal was entered I directed that he be discharged from custody.

Q. Then Francisco Baquiran was no longer in jail after the 13th of the month?

A. No sir, he was not.

PROSECUTION: We have another witness, whose name is Hermogenes Ramos, who has not been found. The prosecution now
136 rests but asks this honorable court, in case the said Hermogenes Ramos should be found by the accused, that the government be permitted to use him as a witness for the prosecution. He is a proper witness for the prosecution, one of the most important witnesses; and I have had an interview with him. The prosecution rests but reserves the right to present the said Hermogenes Ramos as a witness for the government in case that he should be found during the progress of this trial.

DEFENCE: In as much as this man Hermogenes Ramos has been charged with the killing of the Chinaman Go Siengco by the district attorney, we object to the motion without any express reason therefor.

COURT: The court will permit the district attorney to present the witness Hermogenes Ramos in case he appears during the hearing of the evidence introduced by the defendant, only as additional evidence, but not as direct evidence.

Evidence for the Defendant.

FERNANDO RUSTANT, having been first duly sworn, exhibiting certificate of registration F700430, testified as follows:

I am a native of Lyon, France, a resident of Ilagan, Province of Isabela, 42 years of age, married, and an employee by occupation.

137 Direct examination by Counsel for Defendant:

Q. Where were you on the night of the 1st of March, 1909; of this year?

A. At Malunó.

Q. In what part of Malunó?

A. At the hacienda building.

Q. Please state whether anything happened that night.

A. Yes sir.

Q. What was it?

A. Mr. Picó told all of us that the lieutenant of the barrio had received an order to the effect that there were suspicious persons in the hacienda, and Mr. Picó naturally invited every one of us to make the nightly rounds.

Q. And where did you go?

A. We went to the house of the foreman, Castellanes.

Q. How did you go there?

A. On horseback.

Q. Were you all on horseback?
A. No.
Q. Who went on horseback?
A. Myself, Mr. Picó, Mr. Tebes and the lieutenant.
Q. Did anybody else go with you?
A. Yes sir. Two other men.
Q. Do you remember who they were?
A. As I am a new man on the hacienda I cannot tell you their names, but I know that both of them are Mr. Picó's servants
138 and one of them is a mute.

Q. After you arrived at the house of Mr. Castellanes, did any of you enter the same?
A. Yes sir.
Q. Who entered the house?
A. The lieutenant, Mr. Picó and Mr. Tebes.
Q. And you and the rest of the people, where did you remain?
A. Downstairs.
Q. When Mr. Picó, Mr. Tebes and the lieutenant of the barrio came down from the house, was anybody else with them?
A. Yes sir.
Q. Who?
A. A Chinaman.
Q. When the Chinaman came down from the house of Mr. Castellanes, was he tied?
A. No sir.
Q. When the Chinaman came out from under the house of Eulogio Castellanes, did Mr. Picó assault him?
A. No sir.
Q. And after they all came out of the house, where did you go?
A. To the hacienda building.
Q. And how did you get back to the hacienda building?
A. On horseback.

Q. And how did the Chinaman and the two boys get to
139 the hacienda building?
A. On foot.
Q. Did they go ahead of you or remain behind?
A. Ahead of us.
Q. On your way from the house of Castellanes to the hacienda building, did you hear or notice that the persons who were with the Chinaman had any trouble with him when he was being taken to the hacienda building?
A. Yes sir.
Q. Where did that happen?
A. On a rise on the road.
Q. And what was the nature of the trouble?
A. When we heard the noise we increased our pace and asked them what was the matter and they told us that the Chinaman was trying to get away, and the two boys in view of the fact that the Chinaman refused to walk pushed him along.
Q. Where did they take him to?
A. At first they took him to the top of the hill.

Q. And what happened there?

A. The two men were tired when they got to the top of the hill and asked for help, and the lieutenant told Mr. Picó that the two boys were complaining and wanted to know whether somebody else could assist them. Mr. Picó then called two other men, I do not know whether they worked for him or not because I am a new man on the hacienda, and then we proceeded to the hacienda
140 building and left the lieutenant with the two boys and the Chinaman.

Q. Do you know whether the Chinaman finally got to the hacienda?

A. Yes sir.

Q. Did you see the Chinaman after that?

A. Yes sir.

Q. Where was he when you saw him?

A. He was at the bottom of the steps.

Q. What was he doing there?

A. When the Chinaman was there I saw the lieutenant searching around his waist.

Q. Did you see the Chinaman again that night?

A. No sir.

A. Do you know whether anything happened to the Chinaman after that?

A. No.

Q. Did you see the Chinaman on the following morning?

A. Yes sir.

Q. Was he dead or alive?

A. He was dead.

Q. Did you see the face of the Chinaman on the following morning after he had died?

A. Yes sir.

Q. Did you notice anything particular on his face?

A. Nothing except the natural signs of death.

Q. Please state whether or not the tongue of the China-
141 man was sticking out of his mouth.

A. No sir; it was not.

Q. Please state whether or not his left eye was half open.

A. No.

Q. Can you tell us, Mr. Rustant, how far it is from Castellanes' house to the hacienda building?

A. I am not an expert, but I should say it is quite a long distance.

Q. About one thousand meters?

A. I think so.

Q. In what direction does the road run from the hacienda building?

A. To the west.

Q. And the road leading from Castellanes' house to the hacienda building, is it straight or winding?

A. It is more or less straight.

Q. What do you have to say about the width of the road?

A. It is not, properly, speaking, a road, but what we ordinarily call a trail or, rather, *pilapil* (rice paddy embankments).

Q. What is the width of that road?

A. About one meter.

Q. Is there any road near the hacienda building?

A. There is quite a wide road or street running in front of the hacienda building.

142 Q. What is the name of that wide street running in front of the hacienda building?

A. That is the road leading to San Antonio, on one side; and the road leading to Lukban towards the river; but beyond that the road consists of rice paddy embankments.

Q. In what direction does that road run,—north, south, east, or west?

A. On one side it runs in an almost northerly direction and on the other side in a southerly direction.

Q. About how far is it from the hacienda building to the road running in front of the same?

A. What do you mean? The hacienda building stands on a piece of ground and between the house and the road there is a sort of yard facing the road.

Q. I mean the distance between the road and the building itself?

A. About 15 or 20 meters.

Q. And how wide is the hacienda building itself from west to east?

A. About 25 meters if I remember correctly.

Q. Is that the width of the building itself?

A. If I am not mistaken, it must be about 20 or 25 meters.

Q. On what side of the house are the stairs where you saw the Chinaman sitting down?

A. I saw the Chinaman on the steps back of the house

143 facing the street.

Q. Can you point out to me the side of the house?

A. The house faces east, if I remember correctly.

Q. Where are the stairs w-ere you saw the Chinaman?

A. To the east.

Q. In going from Castellanes' house to the hacienda building, to the place where you say you met the Chinaman and the two boys, how far were you from the Chinaman and the two boys?

A. About 70 or 75 meters.

Q. Did you go on horseback from Castellanes' house to the hacienda building?

A. Yes sir.

Q. And during the journey from the house of Castellanes to the hacienda building, did any of you dismount?

A. No sir.

Q. And during the journey from the house of Castellanes to the hacienda building, did Mr. Picó asault the Chinaman?

A. No sir.

Q. On the night of the 1st of March did any of you go to the house of Castellanes carrying a gun?

A. Yes sir.

Q. Who carried the gun from the house of Castellanes to the hacienda building?

A. The mute.

Q. Are you absolutely sure of that?

144 A. I am absolutely sure.

Q. That is all.

Cross-examination by the DISTRICT ATTORNEY:

Q. What relation exists between you and Mr. Picó?

A. Acquaintances.

Q. What is your occupation?

A. I am an employee of the hacienda.

Q. Of what hacienda?

A. Of Malunó.

Q. Who was your chief?

A. Mr. Picó.

Q. Then you are one of the employees of the hacienda of Malunó under the orders of Mr. Picó?

A. Yes sir.

Q. That was the relation existing between you and Mr. Picó, was it not?

A. Yes sir.

Q. And on the night in question you went along with him as an employee of the hacienda of Malunó under his orders?

A. Yes sir.

Q. How many shotguns did you have on that night?

A. Only one.

Q. Whose was it?

A. Mr. Picó's.

Q. You were making the nightly rounds for the reason, as

145 you say, that there were certain suspicious persons on the hacienda?

A. Yes sir.

Q. Do you know whether Mr. Picó carried his shotgun with him on that account?

A. I suppose he did.

Q. When the party returned from the house of Castellanes, who carried the shotgun?

A. Mr. Picó himself.

Q. Who is that man Picó to whom you refer as carrying a shotgun?

A. The accused (indicating the accused).

Q. He was your chief as an employee of the hacienda, was he not?

A. Yes sir.

Q. You joined Mr. Picó on his nightly rounds at his invitation, did you not?

A. Yes sir.

Q. When you people arrived at the steps of the house of Mr.

Castellanes, do you know whether Mr. Picó did anything or not with his shotgun?

A. Yes sir; he fired several shots into the air.

Q. And he did that because of the rumor that there were suspicious persons on the hacienda, did he not?

A. Yes sir.

Q. And for that reason he also took the precaution of
146 carrying a shotgun with him, did he not?

A. Yes sir.

Q. And upon your return from the house of Castellanes, I think you have said here that the two boys accompanied the Chinaman and that they had to walk, did you not?

A. Yes sir.

Q. Were they ahead of you?

A. Yes sir.

Q. And how far were you from those who were carrying the Chinaman?

A. Quite a distance.

Q. How far was it?

A. Some seventy meters.

Q. But why so far? You were on horseback, and how was it that you could not go right along with them, they being on foot?

A. Because at times we stopped and at times the horses refused to go, and then we were riding in single file, because the road was too narrow.

Q. You have said that on your return to the hacienda building the mute was the person who carried the shotgun?

A. Yes sir.

Q. Then it was not Mr. Picó, was it?

A. No sir.

Q. Can you explain to me the reason why when you went to the house of Castellanes Mr. Picó carried the gun, and on
147 your return to the hacienda building he did not?

A. I suppose that he carried the gun at first because he was afraid of an attack, but on the return to the hacienda building as the Chinaman, the person who was alleged to be a suspicious character, had been caught, he had no further fear.

Q. What sort of a shotgun did Mr. Picó have with him?

A. One of those common, ordinary shotguns you hang over the shoulder.

Q. Did the gun have any strap to it?

A. Yes sir.

Q. Then it must have been very easily carried?

A. Yes sir.

Q. And why did not Mr. Picó carry the gun himself on his return to the hacienda building?

A. I suppose because he thought there was no further danger, he did not care to burden himself with the weight of it on account of his age, as he is rather old, and did not want to bother with it.

Q. Then on the way back to the hacienda building Mr. Picó

did not take any further precautions and for that reason intrusted the shotgun to the mute, is that what you meant?

A. That is merely a supposition on my part as to whether or not he did not take any further precautions and his desire to relieve himself of the weight of the gun.

148 Q. Who took the Chinaman to the hacienda building?

A. Those two boys.

Q. Please state whether or not Mr. Picó delivered the gun to the mute to relieve himself of the weight of it and whether or not when the Chinaman was in the custody of the mute and the other boy Mr. Picó delivered the gun to the mute, not in order to relieve himself of the hindrance of carrying it, but so that the mute could better watch the Chinaman?

A. I do not know.

Q. You have also said that when they reached the top of the incline they had some trouble?

A. Yes sir.

Q. What kind of trouble was it?

A. The trouble arose as the result of the Chinaman's efforts to escape, and the two men were urging him to walk up the road, but the Chinaman refused to walk and naturally the men became impatient and forced him to walk.

Q. Are you sure that on your return to the hacienda building Mr. Picó did not carry the shotgun?

A. I remember that when we arrived at the hacienda building he got the gun from another party before he entered the house.

Q. He got the gun after he entered the house, did he not?

A. About the time he entered the house.

149 Q. Why did the boys and the Chinaman walk in front and you people remain behind?

A. Because the road was too narrow and we had to travel one behind the other.

Q. But why did you not go ahead and leave the boys and the Chinaman behind?

A. I think it was a matter of precaution to prevent the escape of the Chinaman.

Q. I understood you to say that when you got to the top of the incline you passed the boys and the Chinaman and went ahead?

A. Yes sir.

Q. If you thought that the Chinaman wanted to run away, when he and the boys got to the incline, why did you go ahead of them with the gun, whereas when you left the Castellanes house and there were no further precautions to be taken for the reason that the suspecious character, as you say, had been caught, you, nevertheless, left the gun with the mute, and when you arrived at the incline, knowing that the Chinaman was trying to escape, you took the gun away from them; how can you explain that?

A. Mr. Picó told the lieutenant to take charge of the matter and the lieutenant is the one who ought to know what he did in order to prevent the escape of the Chinaman.

Q. And how did those two boys take the Chinaman to the hacienda building?

150 A. At first they walked along.

Q. Then they walked all the way to the hacienda building, did they not?

A. Yes sir.

Q. Was the Chinaman free?

A. Yes sir.

Q. Please state whether it is true that the Chinaman was tied.

A. I did not notice that he was tied.

Q. When you got to the incline you say that you called on the other two boys, that is to say, that you called two additional boys?

A. Yes sir, because when the other two got to the top of the incline they were almost exhausted and they called on the lieutenant to send the other men to help them.

Q. To help them with what?

A. To carry the Chinaman to the hacienda building.

Q. You mean to say that they actually had to carry the Chinaman in their arms?

A. Yes sir, on account of his refusal to walk.

Q. How many persons assisted in carrying the Chinaman as you say?

A. They called two other men to help them.

Q. And how many persons were there in all?

A. As I have already said, we were ahead of the party and I do not know what happened afterwards.

151 Q. Please state that the truth is that it became necessary to carry the Chinaman in their arms because he was completely exhausted and not because he refused to walk.

A. It was because he refused to walk.

Q. At what time did all this happen?

A. Between eleven and twelve o'clock at night.

Q. Where did you live at the time?

A. At the hacienda building.

Q. With Mr. Picó's family?

A. Yes sir.

Q. Did the lieutenant of the barrio also live on the hacienda?

A. Yes sir.

Q. But he did not live in the hacienda building, did he?

A. No sir. He lived in another house at quite a distance from the hacienda building.

Q. Do you know the name of the lieutenant of the barrio of Malunó?

A. I simply known him by the name of Francisco. I do not know his surname.

Q. Is he the lieutenant of the barrio?

A. Yes sir.

Q. When you arrived at the hacienda building, do you know where they put the Chinaman?

A. There where I saw him, on the steps back of the house.

152 Q. There is a road leading to the steps, where the people go through, is there?

A. You have to pass through an orchard.

Q. And there is a road through that orchard leading to the steps, is there not?

A. Yes sir.

Q. And after that, where did they put the Chinaman, if you know?

A. I do not know.

Q. Do you know whether that Chinaman subsequently died?

A. So I learned.

Q. You learned that he had died?

A. Yes sir.

Q. Did you see the place where the body was found?

A. I simply saw when they took the body to the cemetery.

Q. Then they took the body out of the house to be buried?

A. Yes sir, outside of the yard of the house.

Q. So that when you saw the body of the deceased Chinaman, the same was still at the hacienda building, was it not?

A. It was in the corridor of the house.

Q. You saw the body of the deceased Chinaman at the bottom of the steps of the hacienda building?

A. The last time I saw it was in the corridor, ready to be buried.

Q. Then the Chinaman died right there, did he not?

A. Yes, he died in the hacienda building, if the corridor
153 of the building be considered as a part of the building.

Q. Are you absolutely sure the Chinaman was taken to the hacienda building, occupeid by Mr. Picó?

A. Yes sir.

Q. Do you know why he was taken there?

A. I am unable to say, because I did not bother myself about those details.

Q. Who was the boss of that house?

A. Each man is the boss of his own house.

Q. Then, who was the boss of the house occupied by Mr. Picó?

A. Mr. Picó himself.

Q. Why was the Chinaman taken to the hacienda building, if you know?

A. I was told sometime afterwards that the lieutenant of the barrio asked that the Chinaman be locked up in the room facing the corridor because he had no safe place in his own house where he could keep the Chinaman until the following morning.

Q. How do you know that?

A. Because the lieutenant himself told me.

Q. When did the lieutenant tell you that?

A. That very same night.

Q. Do you know why the Chinaman was arrested?

A. Yes, sir; because he was a suspicions character I presume.

154 Q. That is mere presumption on your part, is it not?
A. As far as I am concerned, yes. But I was not the man in charge of the hacienda and therefore I do not know.
Q. When did you see the dead Chinaman in the house occupied by Mr. Picó?
A. On the following day, the 2nd of March.
Q. How do you know that the Chinaman died a natural death?
A. I am not a physician or anything of the kind, but I can tell a person who has died on account of one thing or other and one who has died a natural death. I say that the Chinaman died a natural death because I was very close and I noticed nothing unusual.
Q. You mean to say that he died a natural death as the result of a natural cause?
A. It must have been of some disease, I do not know.
Q. How do you know that?
A. I have already told you that I saw his face the next morning and it was perfectly natural, without any scratch or bruise on it.
Q. You say that you saw the body of the deceased Chinaman and that the Chinaman died a natural death, how do you know that?
A. I have said to you that I saw the Chinaman on the following morning dead as any other dead person I have seen in my life
155 who died of some disease, natural countenance and the eyes closed.

Q. That is all.

MAXIMO TEVES, having been first duly sworn, and exhibiting certificate of registration 188,750, testified as follows:
I am a native of Manila, a resident of Malunó, Ilagan, Province of Isabela, 31 years of age, married and an employee.

Direct examination by COUNSEL FOR DEFENDANT:

Q. Where do you live?
A. In Malunó.
Q. Where were you on the night of the 1st of March of this year?
A. At the hacienda building of Malunó.
Q. Were you employed there, or what?
A. I was employed on the hacienda of Malunó.
Q. In what capacity?
A. I am employed there as a practitioner and also as an assistant to the general manager.
Q. Please state whether anything unusual happened at Malunó on the night of the 1st of March of this year?
A. Yes sir.
156 Q. What happened there?
A. Well, we were told that there were some suspicious characters on the hacienda.
Q. How do you know that there were any suspicious characters there?
A. Because the lieutenant of the barrio notified the manager of the hacienda to that effect.

Q. And what did you do after that?

A. Mr. Picó invited us to make the rounds in order to see whether there were actually any suspicious characters within the hacienda.

Q. And where did you go?

A. To the house of Castellanes.

Q. Who went to Castellanes' house?

A. Mr. Picó, the lieutenant of the barrio, I, and Mr. Rustant; and two boys.

Q. Who were those two boys?

A. Hermogenes Ramos and the mute.

Q. And all of you went to Castellanes' house? How?

A. The four of us—Francisco Baquiran, (the lieutenant) I, Mr. Picó and Mr. Rustant, on horseback; and the other two, on foot.

Q. When you arrived at the Castellanes house, did any of you go in?

A. Yes sir.

157 Q. Who?

A. The lieutenant, Mr. Picó and myself.

Q. And once in the house of Castellanes, what happened afterwards?

A. Well, Mr. Picó called the owner of the house, Castellanes, and asked him whether there was any strange person there, and Castellanes told him "yes." He asked him where he was and Castellanes pointed out to Mr. Picó his guest, who was then asleep.

Q. And what else?

A. Mr. Picó told Castellanes to call his guest, but the guest paid no attention. Then Mr. Picó approached him and as he had a shotgun in his hands he said to him, "get up," and at the same time touched the sleeping man with his gun.

Q. And what else?

A. The Chinaman immediately threw off the blanket and caught hold of the gun that Mr. Picó had, and while they were both wrestling for the possession of the gun, the lieutenant of the barrio interfered and separated both of them, and the lieutenant took the Chinaman downstairs and then we followed.

Q. When you people left the house, please state whether or not the Chinaman was tied.

A. No sir.

158 Q. When you people got to the bottom of the steps of that house, please state whether or not Mr. Picó assaulted the Chinaman.

A. He did not.

Q. And where did you people go after that?

A. We went to the hacienda building.

Q. You, Mr. Picó and Mr. Rustant and the lieutenant of the barrio, how did you people return to the hacienda building?

A. On horseback.

Q. And the Chinaman and the two boys, how did they get back to the hacienda building?

A. They walked.

Q. Were they ahead of or behind you?

A. We were behind and they were ahead of us.
Q. How far were you from them?
A. About 70 or 60 meters behind them.
Q. Did either you, Mr. Picó, Mr. Rustant or the lieutenant of the barrio, on the way from Castellanes' house to the hacienda building, assault and beat the Chinaman?
A. No sir.
Q. On the way from Castellanes' house to the hacienda building, do you know whether the two boys had any trouble with the Chinaman?
A. Yes sir.
Q. Where did that happen?
A. When they were near the incline.
159 Q. What was the nature of the trouble, if you know?
A. We were informed later that the Chinaman had attempted to escape.
Q. And what happened after that?
A. Well, immediately, as the Chinaman was trying to escape and refused to go to the hacienda building because, as he claimed, he was not guilty of any offence and had brought nothing objectionable into the hacienda, the two boys, when the Chinaman refused to walk, lifted him up bodily and carried him to the top of the hill over which they had to pass, and once there, the boys, being apparently tired, asked for assistance.
Q. And do you know whether any other persons went there to assist them?
A. Yes sir.
Q. I understood you to say that you had to go over that hill or incline in order to get to the hacienda building?
A. Yes sir.
Q. And how did you people go from that place to the hacienda building?
A. We continued our journey on horseback, and urged our horses forward when we heard the noise occasioned by the trouble between the boys and the Chinaman.
Q. And from the place where the boys had the trouble with the Chinaman, to the hacienda building, how did you
160 fellows go?
A. We went right ahead, because the lieutenant of the barrio had charge of the Chinaman.
Q. Was the lieutenant of the barrio the only man left in charge of the Chinaman?
A. The lieutenant and the two boys.
Q. Did you see the Chinaman again that night?
A. Yes sir.
Q. Where was he when you saw him?
A. He was sitting on the steps.
Q. And what happened there?
A. I only saw him sitting there.
Q. Did you see the lieutenant of the barrio at that place?
A. Yes sir.

Q. What was he doing when you saw him, if he was doing anything at all?

A. He was doing nothing, but he and Mr. Picó had a talk with reference to the Chinaman. The lieutenant wanted the Chinaman to stay in the hacienda building because he had no safe place in his house where he could put him, and Mr. Picó granted the lieutenant's request and allowed the Chinaman to remain in the hacienda building that night.

Q. Did you see the Chinaman again that night?

A. No sir.

Q. On your return from Castellanes' house to the hacienda
161 building, who carried the gun which you claim Mr. Picó had?

A. The mute.

Q. Did the mute carry that shotgun all the way from Castellanes' house to the hacienda building?

A. I do not know exactly.

Q. On the road from Castellanes' house to the hacienda building, did Mr. Picó beat the Chinaman?

A. No sir.

Q. Did you see the Chinaman on the following morning, the 2nd of March of this year?

A. Yes sir.

Q. How did you see him?

A. He was dead.

Q. Did you notice the face of the dead Chinaman that morning?

A. Yes sir.

Q. Please state the condition of the face of the Chinaman when you saw him.

A. Well, it was normal.

Q. Please state whether or not the tongue was sticking out of his mouth when you saw him.

A. No sir.

Q. Please state whether or not on that occasion when you saw the body of the deceased Chinaman the following morning one of his eyes was half open.

A. No sir.

162 Q. The left eye was not half open, you say?

A. No sir.

Q. You say that you are the ministering surgeon on the hacienda of Malunó?

A. Yes sir.

Q. Have you studied medicine?

A. Yes sir; in the University of Santo Tomas and I hold a surgeon's certificate.

Q. How many years did you study in the university?

A. Two years.

Q. Have you had any practice or experience in hospital work?

A. Yes sir.

Q. Where did you get that practice and experience?

A. In the San Juan de Dios Hospital and at the Cavite Naval Hospital.

Q. How long were you in the Cavite Naval Hospital?
A. One year.
Q. And how long were you in the San Juan de Dios Hospital in Manila?
A. Two years.
Q. And did you assist in the hospital work?
A. Yes sir, as a ministering surgeon.
Q. What was the nature of your work there?
A. Any work that might be assigned to me by the doctor, to assist the physicians in all operations performed and to
163 attend to all the work connected with the care of the patients in the hospital.
Q. While at the hospital did you do any surgical work?
A. Yes sir.
Q. During your practice as a ministering surgeon, did you ever attend any surgical operations or post-mortem examinations?
A. Yes sir.
Q. Do you have any license to practice your profession?
A. Yes sir.
Q. What kind of license is that?
A. A license issued by the provincial board of Ilagan to practice my profession. I am also registered with the department of health of Manila.
Q. Do you have a license to practice medicine?
A. Yes sir, as a ministering surgeon.
Q. Is that what you call a ministering surgeon?
A. Yes sir.
Q. And how long have you held that license to practice the medical profession as a ministering surgeon?
A. Since 1897.
Q. And did you hold a license during Spanish sovereignty?
A. Not in this province.
Q. I mean in the Philippine Islands?
164 A. Yes sir.
Q. This same kind of license?
A. Yes sir.
Q. And did you get a new license under the laws in force in the Philippine Islands?
A. Yes sir.
Q. And is that the license which you received in the year 1905, is it?
A. Yes sir; it is the same.
Q. Were you present at the post-mortem examination held on the body of the Chinaman Go Siengco by Dr. Claravall at Malunó on the 5th of March?
A. Yes sir.
Q. Did you see all that happened during the post-mortem examination?
A. Yes sir.
Q. Were you close by?
A. Close enough.

Q. Please state what was the condition of the body of the deceased as to the state of decomposition.

A. It was considerably decayed.

Q. Was it so badly decayed that the odor was very noticeable?

A. Yes sir; the smell was very strong.

Q. Kindly state what you saw on the outside of the body, if you saw anything.

A. I saw certain livid and black and blue spots on the
165 body. I also noticed that the hair had fallen out and that the skin was falling apart.

Q. Do you mean to say the body was in such a state of decomposition that the skin was falling apart?

A. The epidermis was falling apart.

Q. Was the body opened?

A. Yes; the thoracic cavity.

Q. Only that part?

A. Yes sir.

Q. Now please state whether after the body was cut open any parts were taken out.

A. Yes; the heart was taken out.

Q. Was that the only organ of the body taken out?

A. Yes sir.

Q. In addition to what you have just said, was there any other or further examination made of the remaining organs of the body, for instance, muscles, veins, arteries, or any other part of the body?

A. None whatever.

Q. According to your knowledge of medicine and the experience and practice you have had, can you state what was the probable cause of the livid and black and blue spots on the spinal column of the deceased, without making an examination of the spine?

A. No sir.

Q. Was the spinal column examined on the occasion of
166 the post-mortem examination?

A. No sir.

Q. Do you think that the post-mortem examination held upon the body of the deceased, in your opinion, was sufficient to determine the cause of the death of the deceased?

A. Impossible. In the first place, because the examination was very deficient; and secondly, because the body of the deceased was in an advanced stage of decomposition and it was impossible to make any true examination of the body.

Q. Do you mean to say that on account of the state of decomposition of the body and the deficiency of the examination held, it was impossible to determine the cause of the death of the Chinaman?

A. Yes sir.

Q. Please state whether or not on the 2nd day of March of this year, at the hacienda of Malunó, you made or helped Francisco Baquiran, the lieutenant of the barrio of Malunó, to make the report sent in by him as such lieutenant to the municipal president of Ilagan.

A. No sir.

Q. With reference to the death and burial of the Chinaman Go Siengco?

A. No sir.

Q. Did you have no intervention whatsoever in connec-
167 tion with the report sent to the municipal president of this town of Ilagan?

A. No sir.

Q. Your duties on the hacienda of Malunó would not permit you to interfere or require you to interfere with the duties of the lieutenant as such?

A. No sir.

Q. That is all.

Cross-examination by the DISTRICT ATTORNEY:

Q. Were you an employé of the hacienda of Malunó on the evening of the 1st of March of this year?

A. Yes sir.

Q. And on the following day too?

A. Yes sir.

Q. And even now?

A. Yes sir.

Q. And who was your chief?

A. Mr. Juan Picó was the manager.

Q. Can you point out Mr. Picó here?

A. That gentleman there (indicating the accused).

Q. You have stated that on the evening in question you went out with the accused, the lieutenant of the barrio, and Mr. Rustant and called at the house of Mr. Castellanes?

A. Yes sir.

Q. Did any of you carry firearms?
168 A. Yes sir.

Q. Who?

A. Mr. Picó.

Q. What kind of a weapon?

A. A shotgun.

Q. Why did he have a shotgun?

A. I think it was on account of the suspicious characters who the people claimed were on the hacienda and he took it as a means of protection.

Q. And who carried that gun?

A. Mr. Picó.

Q. Did you finally go into the house of Castellanes?

A. Yes sir. We did.

Q. And when you arrived at the steps of the house of Mr. Castellanes did Mr. Picó still have this shotgun with him?

A. Yes sir.

Q. Do you know whether he did anything with it?

A. Yes sir; he fired a shot into the air.

Q. Did he fire into the air or at some person?

A. Into the air.

Q. How many times did he fire his gun?
A. Twice.
Q. Do you know why he fired his gun twice at that place?
A. I suppose in order to warn the suspicious characters that we were pretty well protected.
169 Q. For what purpose?
A. So that they would run away and would not dare attack us.
Q. You mean to say that he did that to frighten them?
A. Yes sir.
Q. What did you do afterwards, after the shots were fired?
A. We went into the house of Castellanes, Mr. Picó, myself and the lieutenant.
Q. You have stated that Mr. Picó ordered the lieutenant of the barrio to arrest the Chinaman and take him downstairs, did he not?
A. Yes sir.
Q. Do you know why he ordered the Chinaman arrested?
A. The reason was that he was a stranger on the hacienda; perhaps because he attempted to wrest the gun from Mr. Picó.
Q. Do you mean the Chinaman?
A. Yes, the Chinaman.
Q. And do you know why he ordered the Chinaman taken to the hacienda building?
A. For the very reason I have said before, that is to say, that he was a suspicious person on the hacienda.
Q. When you left the house of Mr. Castellanes, did any of you carry a weapon?
A. Yes sir.
170 Q. Who was it?
A. The mute.
Q. Whose weapon was it?
A. Mr. Picó's.
Q. Was there any other weapon there except Mr. Picó's.
A. No, there was not.
Q. Do you know why upon his return from the house of Castellanes Mr. Picó delivered his gun to the mute?
A. I suppose it was in order to relieve himself of the weight.
Q. But was not Mr. Picó on horseback.
A. He was on horseback but it is always uncomfortable to carry a gun with you, particularly when you are tired.
Q. Did the gun have a strap attached to it?
A. Yes sir, it had.
Q. But Mr. Picó might have carried the gun himself, do you not think so?
A. Yes sir.
Q. You say that he delivered the gun to the mute because it was rather uncomfortable for him to carry the weapon?
A. Yes sir.
Q. But when he went to the house of Castellanes the gun apparently was not too much of a burden to him, was it?
A. I presume not, because he was not then tired, this being the

first time, and then I think he carried the gun for his own
171 protection in case we should be attacked on the road.

Q. But when he returned he was no longer afraid of any attack, was he?

A. There was really no reason for it, because the suspicious character had already been caught.

Q. Was the gun loaded when the mute had it?

A. I cannot say.

Q. Where were you when you returned to the hacienda building? Were you ahead of or behind the Chinaman?

A. Quite a distance behind.

Q. Why?

A. We were talking.

Q. Why did you not go ahead of him?

A. Because the night was cold and we could not go fast; the weather being rather cool we were in no hurry.

Q. You people did not care whether the Chinaman ran away or not, did you?

A. No sir.

Q. And why was he arrested by Mr. Picó?

A. Because he was a suspicious character.

Q. Then his idea was to send him to the hacienda building?

A. His idea was to turn him over to the lieutenant of the barrio, the local authority.

Q. And you people went in the direction of the hacienda building, did you not?

172 A. We immediately went in the direction of the hacienda building.

Q. Did you want the Chinaman to escape?

A. We had no particular desire that he should escape.

Q. You say that when you arrived at a place near the hacienda building some trouble arose between the boys and the Chinaman?

A. Yes. When we got within a short distance from a hill on the road we heard some noise, you know, and we hurried along and inquired what was the matter and those in charge of the Chinaman said that the latter was trying to escape and refused to go to the hacienda building, claiming that he had done nothing wrong. Then those who were in charge of the Chinaman took him forcibly to the top of the hill on the road and stopped there to rest, and it was then when we overtook them.

Q. And then what?

A. When we arrived there those who were carrying the Chinaman said that they were tired and asked the lieutenant to help them and got two other men to assist them in carrying the Chinaman, and the lieutenant asked Mr. Picó whether he could send two other boys to assist these men and Mr. Picó told his two boys to go and then we left them there and went to the hacienda building.

Q. To help them to do what?

A. Carry the Chinaman.

173 Q. Why was it necessary to lift the Chinaman?

A. Because he refused to go to the hacienda building and would not walk.

Q. And did the mute have the gun with him which Mr. Picó gave him, did he take it right along with him?

A. When we separated I do not know exactly whether he took it away from the mute or not.

Q. And why did you leave the other men behind?

A. Because we were anxious to go to bed.

Q. But why did you not wait, knowing as you did that the Chinaman was trying to escape?

A. Because it was not necessary as the lieutenant of the barrio remained there to look after them.

Q. And why did Mr. Picó order the Chinaman arrested?

A. Because the lieutenant suggested it.

Q. Then you did not want the Chinaman to escape, did you?

A. No sir.

Q. But did you not say that Mr. Picó ordered two other boys to assist the other men in carrying the Chinaman to the hacienda building?

A. Yes, because the lieutenant asked him to do that.

Q. Then Mr. Picó sent for the two boys, did he not?

A. Yes sir.

Q. Then he must have had some interest in the matter?

A. No sir.

174 Q. Then Mr. Picó, if he had no interest in the escape of the Chinaman, why did he interfere and go to the trouble of sending for the other two boys to assist the other men in carrying the Chinaman to the hacienda building?

A. No sir. He just simply sent for those two boys.

Q. You mean to say that although he sent for those two boys so as to avoid the escape of the Chinaman, he had no interest whatever in the matter?

A. (Without giving the witness a chance to answer the prosecution put to the witness the following question:)

Q. Have you witnessed everything you have testified to here?

A. Yes sir.

Q. When you arrived at the hacienda building, did you see the Chinaman again?

A. Yes sir.

Q. Do you know where they put the Chinaman?

A. At the foot of the steps and the Chinaman was sitting down.

Q. In what position?

A. Sitting down.

Q. Do you know where they put the Chinaman after that?

A. No sir, because we went to bed.

Q. And that is all you know?

A. That is all.

175 Q. Immediately upon your arrival, you left the Chinaman on the stairs of the house, did you not?

A. Yes sir.

Q. Then you sleep at the hacienda building, do you not?

A. Yes sir.

Q. Was that the house where Mr. Picó lived?

A. Yes sir.

Q. On the following morning did you notice anything particular before dawn on the same hacienda?

A. Yes sir; they told me that the Chinaman was dead.

Q. Did you see the Chinaman after he died?

A. Yes sir.

Q. The same Chinaman you people took out of the house of Castellanes?

A. Yes sir.

Q. It seems to me that you have said here that you overheard the lieutenant ask Mr. Picó to permit him to leave the Chinaman in the hacienda building because he had no safe place in his house where he could keep him,—where were you when you heard tnat?

A. We were inside and the lieutenant went inside to talk with Mr. Picó.

Q. You have said that Mr. Picó was the man who ordered the lieutenant to arrest the Chinaman, and that the lieutenant as a matter of fact arrested the Chinaman and took him down from the house of Eulogio Castellanes, is that right?

A. Yes sir.

176 Q. Can you explain why you said before that Mr. Picó was the one who ordered the Chinaman arrested at the house of Castellanes, and now say that the lieutenant of the barrio was the one who ordered the Chinaman confined in the house of Mr. Picó himself?

A. I do not understand the question.

Q. You have said here that Mr. Picó directed the lieutenant to arrest the Chinaman when you were at the house of Castellanes. Now you state that when you arrived at the hacienda building, the lieutenant was the one who ordered the Chinaman arrested, and that the Chinaman remained at the hacienda building itself because he had no safe place for him in his own house?

A. When I said that Mr. Picó ordered the Chinaman arrested I meant that Mr. Picó instructed the lieutenant to arrest the Chinaman to be turned over to the lieutenant himself because the latter is the authority of the town.

Q. Mr. Picó was the man who ordered the Chinaman arrested and taken downstairs, was he not?

A. Yes sir.

Q. Can you satisfactorily explain how Mr. Picó, being in his own house, the lieutenant, nevertheless, had control of the Chinaman?

A. Yes, I understand perfectly well that Mr. Picó was the owner of the house, but you must understand that he is not vested
177 with any authority and that he was not the lieutenant of the barrio; and as he was not the lieutenant of the barrio he had no authority to arrest the Chinaman and for that reason Mr. Picó turned him over to the lieutenant.

Q. What I refer to is what occurred at Mr. Picó's house, where nobody had anything to say except Mr. Picó.

A. That is just exactly what I have said. Mr. Picó realized that he was not vested with any authority and knew that the lieutenant

was the proper, authorized official and the one who should and does actually act in governmental matters. It was perhaps acting under such authority that the lieutenant directed that the Chinaman stay at the hacienda building.

Q. On what stairs was the Chinaman when you saw him that night?

A. On the stairs leading into the house.

Q. In order to get to the stairs, do you have to go over a road?

A. Yes sir.

Q. Did you see the Chinaman on the following morning?

A. Yes sir.

Q. I think you have stated here before that you think the Chinaman died a natural death?

A. Yes sir.

Q. How can you prove that?

A. On account of the aspect of his face.

178 Q. Only on account of that?

A. And because there was no other reason known to me. The Chinaman died almost suddenly without anything unusual having happened to account for his death.

Q. Then because the Chinaman died suddenly from no other cause known to you, you concluded that he died a natural death?

A. Yes sir.

Q. Is that all?

A. That is all.

Q. Then according to your theory a person who dies a sudden death always dies a natural death?

A. In my judgment, yes.

Q. Is there any other cause known to you which may determine a natural death?

A. If I did not know exactly the cause of his death, I would assume that he died a natural death.

Q. Were you present when the body was disinterred?

A. Yes sir.

Q. You have said that they only opened the thoracic cavity of the body?

A. Yes sir.

Q. And what about the abdomen, was it also opened?

A. No.

Q. Who else was present when the body was disinterred?

A. Dr. Sorarain, Mr. Claravall, José Banta, the municipal

179 president, the justice of the peace and his clerk.

Q. In what condition was the abdomen?

A. It was swollen.

Q. You claimed that the autopsy was not a complete one?

A. Yes sir; because the abdomen was not opened and because no complete analysis was made of the body of the deceased.

Q. In your opinion then the abdomen should also have been opened?

A. Yes sir.

Q. In order to make the examination more complete?

A. Yes sir.

Q. Did you make any remark or observation at the time the post-mortem examination was made?

A. No sir.

Q. And what about the other persons present, did they make any remarks?

A. I cannot say, but I did not make any myself.

Q. Did you not tell Mr. Claravall that he should also open such and such parts of the body of the deceased to make the autopsy complete?

A. I thought that Dr. Claravall knew enough and perhaps my interference would be misconstrued by him.

Q. What was the reason why you were present at the disinterment of the body and the examination of the same?

180 A. Out of curiosity merely.

Q. Did you want to see the body of the deceased?

A. Yes sir.

Q. And the manner in which the autopsy was made?

A. Yes sir.

Q. Then you really wanted to ascertain the truth as to the condition of the body of the deceased, did you not?

A. Yes sir.

Q. You mean to say that what Dr. Claravall did was not sufficient to determine the actual cause of the death of the deceased?

A. Yes sir.

Q. You mean to say because the autopsy was incomplete?

A. Yes sir. The insufficiency of the analysis of the condition of the body and the advanced stage of decomposition in which the body was.

Q. Did you have any doubt or were you entirely ignorant as to the cause of the death of the Chinaman even after the autopsy was made?

A. Yes sir.

Q. But you went there for the purpose of ascertaining the truth, did you not?

A. Yes sir.

Q. And to ascertain the cause of the death, did you not?

A. Yes sir.

181 Q. If you really desired to know the truth as to what actually caused the death of the Chinaman, why did you not suggest to Mr. Claravall that certain other parts of the body should also be examined so as to make the autopsy complete?

A. As I have said before, I thought that Dr. Claravall knew enough to decide what it was necessary to do in connection with the examination of the body and that my interference might have caused him some annoyance. I thought that Dr. Claravall would make such investigations as he thought necessary to determine the condition of the deceased.

Q. If, as you claim, your idea was to ascertain the real facts, and if you noticed that the examination made by Dr. Claravall was not sufficient to dispel the doubt in your mind as to the cause of the

death of the deceased, why did you not indicate to Dr. Claravall what he should do so that you might find out the truth instead of remaining in the dark?

A. In the first place, my interference would have been absolutely unjustified, Dr. Claravall having been sent there by the government.

Q. But perhaps a reasonable suggestion would not have been out of place?

A. I am afraid that Dr. Claravall would have construed any remark on my part as an unjustifiable interference, for the
182 simple reason that nobody called me there to witness the autopsy.

Q. Then you preferred to remain in the dark and leave us all here now in the dark?

DEFENCE: I object to the question.

COURT: Objection sustained.

Q. It seems to me that you have said here that you had no intervention in the autopsy made by Mr. Claravall?

A. Yes sir.

Q. It seems to me that you have testified here that you had nothing to do with the report made to the municipal president of Ilagan?

A. Yes sir.

Q. You said nothing to the lieutenant of the barrio about this, did you?

A. He asked me what the Chinaman died of and I told him of heart failure.

Q. Did you tell him it was heart failure?

A. Yes sir.

Q. After the autopsy was made or before?

A. While the body of the Chinaman was still at the hacienda building, before it was interred.

Q. Since the event actually occurred or after the complaint had been filed in court——

That is all.

183 Examination by the COURT:

Q. You say that the lieutenant of the barrio reported to Mr. Picó that there were suspicious persons on the hacienda, is that true?

A. Yes sir.

Q. And having received that information, how do you know that the Chinaman in question was a suspicious character, and how did you know that this man was in the house of Castellanes?

A. We went out that night and as Castellanes was the foreman at that place Mr. Picó went to him to ask him.

Q. Were you present when the body was interred the following day?

A. I was not.

Q. Who ordered that the body of the Chinaman be interred?

A. The lieutenant of the barrio.

Q. How do you know that?

A. Because he said in the office, "I am going to have this Chinaman buried."

Q. That is all.

Dr. CESAR SORARAIN, having been first duly sworn, testified as follows:

184 I am a native of Madrid, Spain; a resident of Ilagan, Province of Isabela, Philippine Islands, 49 years of age, married, and a physician by profession; I am the physician for the Compañia General de Tabacos de Filipinas, and of the hacienda of Malunó.

Direct examination by COUNSEL FOR DEFENDANT:

Q. What is your profession?

A. Doctor of medicine and surgery.

Q. Where have you studied?

A. In the Medical School of Madrid, and I subsequently graduated from the University of Zaragoza and of Madrid.

Q. How long have you been a doctor of medicine?

A. Since 1882 or 1883.

Q. Do you have a license to practice your profession of physician under the laws of the Philippine Islands?

A. Yes sir.

Q. And how long have you practiced medicine in the Philippine Islands?

A. Since the 31st of May, 1889; twenty years now.

Q. In what parts of the Islands have you practiced your profession?

A. In the Province of Nueva Vizcaya I was provincial doctor there; then I was in charge of the military hospital at Bayombong, appointed by the Captain-General Primo de Rivera; and I
185 was also a member of the board of health in Spain.

Q. And how long have you practiced medicine in the Cagayan Valley?

A. Six years as a municipal doctor; I was also president of the municipal board of health of Aparri for about six years, and the last three years I have been employed as physician by the Compañia General de Tabacos de Filipinas.

Q. I will ask you whether during the time you have practiced your profession of medicine you have had any experience in surgical operations and post-mortem examinations.

A. It is to be presumed, on account of the intimate connection that such matters have with my profession, and then the post-mortem examinations made by me have been so numerous that I cannot remember how many I have made.

Q. I will ask you whether about the 5th of March of this year you were present at the post-mortem examination made by Nicasio Claravall at the hacienda of Malunó upon the body of the deceased Chinaman Go Siengco.

A. Yes sir.

Q. Did you witness what was done during that post-mortem examination?

A. Yes sir.

Q. Were you close enough to see everything that was done?

A. Yes sir.

186 Q. Please state what was done with reference to the autopsy or post-mortem examination.

A. I will first ask this honorable court to excuse me if my testimony should hurt the professional pride of any other witness who has preceded me on the stand, but I must candidly confess that there was no real autopsy made.

COURT: The witness is informed that he must answer the questions propounded to him by counsel in a definite and conclusive manner.

(Question repeated.)

A. I saw the body of an unknown person taken out of the ground. I saw that after the body was disinterred Dr. Claravall ordered an old man by the name of Banta to clean the body of the deceased. I should incidentally say that there were lots on flies around there. They then washed the body and then they decided to open the thoracic cavity and then they took out the heart and put it back again and they made a memorandum and that is all I saw.

Q. And was that the end of the autopsy?

A. Yes sir.

Q. Please state whether or not any examination was made of the spinal column.

A. None whatever.

Q. Please state whether or not there was any examination made of the muscles.

A. None whatever.

187 Q. Please state whether or not there was any examination made of the respiratory organs.

A. No sir, nothing but a superficial examination of the lungs.

Q. Please state whether any examination was made of the muscles or veins in the body.

A. None whatever.

Q. Please state whether or not any examination was made of the external parts of the body for the purpose of determining the depth of any wound or contusion appearing on the same.

A. I do not think so, but I believe that there must have been some because they apparently kept a memorandum of it and notes.

Q. Please state whether or not it would be possible to make a complete examination of the spinal column without opening the spine.

A. Impossible.

Q. Is it possible to make an examination of the spinal column without opening the abdominal region.

A. No sir. It is necessary to open the abdomen and also the osseous cavity of the spinal column.

Q. A wound inflicted on the lumbary region, what kind of an autopsy would be necessary to determine the effects of that wound?

A. The autopsy should be made on the abdomen or front
188 region. As I have said before, it would be necessary in order to determine the intensity or extent of the injury, and then it would be necessary to open that part of the body which is supposed to be injured. In this case it is very difficult to say exactly. This should be done for the purpose of determining whether the first, second and third muscular layers have been injured. Once the actual extent of the injury is thus ascertained, also the degree and nature of the same; since the extent of the wound cannot be determined from an examination of the first, second and third layers, where the mere contusion of the second causes the blood to coagulate; and hence the appearance of the black and blue spots; and the third layer is what actually complicates the wound, causing an injury to the pleura. Then the next thing to do would be to proceed to the opening of the osseous cavity in order to ascertain whether there has been any medullar injury; this for the purpose of ascertaining whether the medulla has been injured; but I am afraid that I will tire the court if I proceed further with my explanation which would be necessarily rather long. In conclusion I should say that it is impossible to determine whether there has been a medullar injury without examining the medulla itself.

Q. The post-mortem examination which you have just described is the kind held on the body of the deceased Chinaman on
189 the 5th of March of this year?

A. Nothing was done really at that post-mortem examination; nothing absolute was ascertained.

Q. A general examination would be necessary in case of a post-mortem examination, would it not?

A. Yes sir; and everything that medical science recommends should be done.

Q. In your opinion was the examination made sufficient to determine the extent of the contusion and the nature of the black and blue spots appearing on the right side of the body of the deceased near the mammary region? What would be necessary in order to determine the contusion or black and blue spots on the right side of the body near the mammary region?

A. In the first place that the body of the deceased be in a proper condition to make such examination possible, but the body in question was in a very advanced stage of decomposition and the tissues were all falling apart.

Q. Was the post-mortem examination held on the body of the deceased Chinaman Go Siengco such as you have now described?

A. There was really no autopsy made. It was a mere examination of the body in which only one of the cavities of the same was opened.

Q. Can you state here whether or not you noticed any contusion on the external part of the body or any other mark of any kind?

190 A. Many; but they were the result of the state of decomposition of the body. This was very natural in the case of a body that had been buried for a period of four days, particularly in these tropical countries. It is impossible to determine the condition of the body after it has been under the ground for four days. The body under such circumstances will always present many black and blue spots, the result of decay.

Q. Please give a definition of black and blue spots and the difference between black and blue spots and livid spots.

A. The black and blue spots are due to a slight vascular rupture, caused by the congested condition of the vascular system, and on account of the rupture of the capillaries extravasation of the liquid part caused a change in the pigment of the skin, whereas the livid spots, if such phrase is accepted as correct, with which I do not agree, are due to lack of nutrition of that particular part of the body and lack of vascularization of a particular spot. But in a dead body it is idle to speak of livid spots, because the blood no longer exists.

Q. Please state whether the black and blue spots as a rule show up on all corpses.

A. These black and blue spots are all the result of decomposition; it is an irregularity of the natural functions.

191 Q. You mean to say that when the body reaches a certain stage of decomposition those spots necessarily appear.

A. When the state of decomposition is imperfect, yes; but not otherwise.

Q. From the examination made of the body of the Chinaman Go Siengco in your presence, at the hacienda of Malunó, on the 5th of March of this year, was it possible to determine the cause of the death of the Chinaman?

A. In the manner and form in which the post-mortem examination was made, it would be impossible.

Q. Why?

A. Because they did not do all that should have been done in a case of this kind.

Q. Do you mean to say that the autopsy was deficient or insufficient for the purpose of determining what really caused the death of the Chinaman?

A. I do not think that any real autopsy was held. It was a mere examination of the body.

Q. From the examination made of the body of the Chinaman, would it be possible to determine the cause of the death of the Chinaman?

A. No sir, and the reason is because the post-mortem examination was not complete.

Q. Please state whether or not the state of decomposition of the body at that time would prevent the determination of the cause of the death of the Chinaman Go Siengco?

192 A. No, because it was impossible to determine anything at all, considering the actual condition of the body.

Q. Is it possible to determine the cause of the death of a person

who has been buried for four days with the same ease as in the case of a person who has just died?

A. Not at all.

Q. Why?

A. Because in the case of a person who has just died the examination can be very easily made. There is no occasion for confusion; whereas in the case of a body in a state of decomposition it is very difficult to make the examination and it is necessary to have a very large experience to make any intelligent examination of a body in such condition.

Q. From what you saw during the course of the examination of the body of the deceased, can you say as a doctor what the cause of the death of the Chinaman Go Siengco was?

A. I cannot.

Q. Please state what was the stage of decomposition in which the body was when the examination in question was made.

A. It was in a very advanced stage of decomposition; and the skin was falling apart; the humours were running out; and on account of the rupture of the skin, which was swollen, the epidermis, which is the first lawer of the skin, was falling apart.

193 Q. Please state whether the black and blue spots that you noticed on the body of the deceased Go Siengco at the time the post-mortem examination was held would have caused his tongue to stick out of his mouth and his left eye to open.

A. I only noticed the swelling of the tongue, but I did not notice that the same protruded at all. I simply noticed that his face was swollen.

Q. And what you have just stated would be the normal condition of a dead person in a state of decomposition?

A. Yes. When the body is in a state of decomposition that would be its ordinary appearance.

Q. Did you notice that the rectum protruded at all?

A. Yes sir.

Q. Please state what in your opinion was the cause of the death of the Chinaman.

A. Rupture of the muscles.

Q. Does that also appear as a natural consequence after death?

A. Sometimes it does, but not always.

Q. Was any examination made for the purpose of determining the cause of the protuberance of the rectum?

A. I do not think so.

Q. What was the condition of the heart?

A. It was absolutely normal.

194 Q. When the post-mortem examination was held on the body of the deceased Go Siengco, did you notice on the outside of the body anything which in your opinion would indicate that Go Siengco had died a violent death?

A. No sir.

Q. During that examination did you notice anything inside of the body of Go Siengco which in your opinion indicated that the man died a violent death?

A. No sir.

Q. During that post-mortem examination did you notice anything inside of or outside of the body which would indicate that Go Siengco died as a result of asphyxia or paralysis of the thoracic, respiratory organs?

A. No sir.

Q. During that examination did you notice anything which in your opinion would indicate that the spinal nerve was paralyzed or that the abdominal muscles were paralyzed?

A. No sir.

Q. That is all.

Cross-examination by the DISTRICT ATTORNEY:

Q. When you went to Malunó for the purpose of attending the disinterment of the body of the Chinaman Go Siengco were you the doctor of the hacienda of Malunó?

A. Yes sir.

Q. What relation, if any, existed between you and Mr. Picó?

195 A. None whatever, except that he is the manager of the hacienda.

Q. Do you remember that when the warrant was issued for the arrest of Mr. Picó as the accused in this case, "United States vs. Juan Picoó for murder," you certified as a physician that Mr. Picó was sick and could not be confined in the provincial jail.

A. No sir.

Q. Do you remember having certified to this effect verbally?

A. No sir—verbally, yes.

Q. Did you not come here to this court to inform the judge that Mr. Picó was sick?

A. Yes, he sent for me because he said he had not been able to sleep the night before and as a matter of fact I found him in bed, and I so certified.

Q. So that there was another certification, was there not?

A. I understand that the provincial physician also issued a similar certificate.

Q. So that the certificate by you was only given when the arrest of Mr. Picó was ordered, was it not?

A. Yes sir. I was called by him.

Q. And it seems to me that that same day you accompanied Mr. Picó to this court, did you not?

196 A. Yes, I told Mr. Picó that the judge insisted that he had to appear in court, so I told him that it would be better for him to go to court.

Q. Did Mr. Picó appear in court?

A. I think he did. I did not accompany him. I think, however, that he did come. I did not accompany him for the reason that I had other patients to look after, but when I came to this court I saw him here.

Q. And where is Mr. Picó now?

A. He is right in our presence.
Q. Where would they send him from here? Where they would send them before they appear?
A. To jail. I have been there two or three times, having been called there as a doctor. I only go when they send for me.
Q. When you went to Malunó for the purpose of attending the disinterment of the body of Go Siengco, did anybody tell you to go or did you go of your own initiative?
A. It was suggested to me that the doctor of the hacienda should be there.
Q. Who suggested that to you?
A. Mr. Picó's family.
Q. And did you go there to witness the result of the disinterment and autopsy on the body?
A. Yes sir.
Q. What was your idea in going there?
A. My only idea was to witness whatever happened there
197 and learn if I could the cause of the death of the Chinaman, but I had no particular or personal object.
Q. Your idea was to ascertain the truth, was it not?
A. Yes, because professional dignity would seem to demand it.
Q. Your idea was to ascertain the truth of what had occurred if the truth could be learned from the circumstances?
A. Yes sir, of course.
Q. Were you present when Mr. Banta and Mr. Claravall disinterred and examined the body?
A. Yes sir.
Q. Do you know who else was near the body of the deceased on that occasion?
A. The person who was standing closest to the body, I cannot say; but I think that Banta, Claravall, Teves and myself were quite close to it, and there were some other persons standing at a distance therefrom on account of the large number of flies.
Q. Do you remember who washed the body?
A. Banta himself.
Q. You said here that you saw when the heart was taken out?
A. Yes sir.
Q. Did you hold it in your hands?
A. No sir.
198 Q. Did you examine it?
A. I examined it when Banta made the examination by order of Mr. Claravall.
Q. How do you say that no autopsy was held?
A. Because you could not call that an autopsy. It was merely the opening of one of the cavities of the body.
Q. And what do you consider to be a complete autopsy?
A. The autopsy should extend to the three great cavities of the body and in the manner which the part of the body would suggest; not otherwise.
Q. In your judgment an autopsy should always be performed with a certain instrument?

A. You can use any instrument except a bolo or hatchet. The first thing that should be done is to open the cephalic cavity by sawing the skull evenly around so as not to injure any of the organs of the brain.

Q. Then in your judgment when a post-mortem examination is made, all of those cavities should be opened, should they not?

A. At least the three great cavities, that is to say, the cephalic, thoracic and abdominal cavities.

Q. Did you notice whether Claravall and Banta opened all those three cavities?

A. Only the thoracic cavity.

Q. Before the body of the deceased was opened, did you notice particularly the appearance of the same?

199 A. Yes sir.

Q. Did you notice the condition of the eyes?

A. Yes sir, they were swollen.

Q. But did you notice the eyes particularly?

A. No, not particularly, because it did not make any difference whether the eyes were open or closed, for this might be the result of decay as his face and eyes were swollen.

Q. And how was the left eye?

A. Closed.

Q. And the tongue, did you notice whether the tongue protruded?

A. Yes sir.

Q. How was it?

A. It was swollen.

Q. But did it protrude?

A. The same thing happens with any corpse which has been buried for any length of time.

Q. Then you noticed the tongue of the deceased, did you not?

A. Yes sir; but I did not see that it protruded at all.

Q. But you could see part of the tongue, could you not?

A. Yes sir.

Q. And that part of the tongue, of course, necessarily had to protrude?

A. You could just see it, but it did not protrude at all.

200 It did not extend beyond lips.

Q. Can you state how long it takes before the dead body becomes actually stiff?

A. Twenty-four hours after death occurs.

Q. Did you notice the rectum?

A. Yes sir.

Q. Was it protruding?

A. Yes sir.

Q. Did you notice the abdomen?

A. Yes sir. It was in normal condition. The green spots on the body were the usual spots found on the corpse of a person who has been dead for a long time, as in the present case, and the face and head had become somewhat swollen.

Q. The protuberance of the rectum, what was it due to?

A. That has no bearing on the diagnosis of the death. It might have been due to the inactivity of the proper muscles or the gravity and pressure of the dirt with which the body was covered in the grave. This is something that may occur even under normal circumstances, as in the case of any common ordinary disease. It is of absolutely no importance.

Q. Did you notice the body of the de[illegible]d after it was washed?

A. Yes sir.

Q. It seems to me that you have said that there were several spots on the body of the deceased?

201 A. Yes sir.

Q. What kind of spots were those?

A. Those spots were due to the mortification of the tissues.

Q. In what part of the body did you notice those spots?

A. On the right side of the thoracic region; also on the left side between the third and fourth ribs; also on the abdomen and the abdominal extremities; in the femoral region, on the knee, and particularly in the lumbary region.

Q. What was the nature of those spots, according to your judgment?

A. Those spots were caused by lack of vitality due to gangrene and falling apart of the epidermis.

Q. Can you state whether or not those spots were due to any blows or contusions?

A. Considering the condition of the body, I think it would have been mere guesswork.

Q. In your judgment, is it possible that some of the spots on the body of the deceased were due to blows or contusions?

A. No sir. However, it may be.

Q. Therefore, in your judgment, it is possible that some of those spots were caused as a result of blows?

A. It might be.

Q. When you were present at the disinterment of the body and when the examination was made and the thoracic cavity

202 was opened, since you refuse to call this an autopsy, did you believe that the examination was incomplete and that it was insufficient to determine the real facts.

A. Yes sir.

Q. Did you call Mr. Claravall's attention to the incompleteness of the examination?

A. No sir, for many reasons, because I was only there as a witness and not as an expert; and the second reason, because I could not consistently deal with a man who was not a professional physician, as I am.

Q. Do you remember if you had any dispute with him with reference to those spots?

A. No sir.

Q. Do you not remember that Mr. Claravall called your attention to the black and blue spots and particularly those appearing in the lumbary region?

A. Yes sir.

Q. And what did you say to him?

A. I told him that they were of no importance whatever.

Q. Do you not remember that when Mr. Claravall called your attention to the red and purple color of the spots, which indicated that they were due to some contusion, you did not say a word but merely shrugged your shoulders?

A. I do not remember that detail.

Q. Do you remember whether the municipal president was there too?

203 A. Yes sir.

Q. Do you remember whether you had any conversation with him as to those spots found on the body of the deceased?

A. Yes sir.

Q. What did you say to him?

A. I told the president that on account of the actual condition of the body it was impossible to determine the cause of the death.

Q. Is it not a fact that you told the president, Mr. Maramag, that, in your judgment, there were certain contusions on the body of the deceased?

A. No sir; I do not remember.

Q. That there were contusions on the body and that the Chinaman only died of fright?

A. Yes sir; that he died of fright.

Q. And that you said: "But the trouble is that Mr. Picó is responsible for it." Now did you not say that?

A. I do not understand your question.

Q. Is it not a fact that you had a conversation with the municipal president of Ilagan and that you told him that as a matter of fact there were contusions of the body of the deceased, and that although, in your opinion, the Chinaman had died of fright, the trouble was that Mr. Picó was the one to be blamed for it, I mean for those contusions?

A. No sir; about Mr. Picó being responsible for it, why I did not know anything about the facts. I was then absolutely ig-

204 norant of the fact that Mr. Picó had anything to do with it. Absolutely virgin as far as that is concerned.

Q. So that at that time you knew nothing about the facts, did you?

A. Absolutely nothing, but Mr. Teves told me on the road.

Q. When Mr. Picó's family called you in order to attend the disinterment of the body of the Chinaman, did they ask you to go there and observe the body of the Chinaman because so and so had happened?

A. No sir. They simply told me to go and see the post-mortem examination as the physician of the hacienda, and that is the reason why I went there.

Q. Have you attended many disinterments?

A. Yes sir.

Q. And also many autopsies?

A. Yes sir.

Q. Those bodies which you disinterred and examined, how long had then been dead?

A. A different number of days, some had been buried for two, others for three, and four, and even for fifteen and one month.

Q. Of course, you have read in medical works that bodies have been disinterred even nine months after they were interred?

A. Yes sir, but those must be cases where the person was poisoned.

205 Q. And of other causes too?

A. And also when the bones and soft parts of the body have been traversed by a bullet.

Q. And what do you have to say about those cases?

A. They are very useful because they are cases of poisonous intoxication and the poison itself does not disappear but may be found in the abdominal cavity as well as in the stomach, and may be identified. In the case of a bullet in the soft parts of the body, the same can be located provided such parts have not been entirely destroyed.

Q. Then you admit that you told the municipal president of Ilagan that the Chinaman Go Siengco died of fright?

A. It is true that I told him that, but, of course, I was not sure of it.

Q. What was the reason for your belief?

A. Because I was told that the Chinaman was very much frightened when they took him to the hacienda building and they also told me that he was very much excited, and it would not have been strange at all if he had died of fright. However, the autopsy held on his body did not show that he had died of any valvular injury.

Q. Why did you arrive at that conclusion, that the Chinaman had died of fright? If he actually died of fright, as you claim, then it was not necessary to make a complete autopsy on the body and open the abdomen?

206 A. Of course.

Q. Was it necessary to make a complete autopsy on the body in order to determine whether the man had died of fright?

A. Yes sir.

Q. When a person dies of fright, do any black spots appear on his body and does the rectum protrude at all?

A. No sir.

Q. Then, how did you arrive at the conclusion that the Chinaman died of fright?

A. It was mere guesswork on my part. It would have been quite different if I had said that he actually died of fright.

Q. Did you not testify right here that you told the president that the Chinaman died of fright?

A. What I have said is, "I think that the Chinaman died of fright."

Q. Do you assert that to be a fact?

A. No, because that would be an absolutely groundless statement on my part.

Q. That is all.

BALDOMERO ANCHETA, having been first duly sworn, testified as follows:

I am a native of Laoag, Province of Ilocos Norte, and a resident of Ilagan, Province of Isabela, 44 years of age, married, and a carpenter by occupation.

207 Direct examination by COUNSEL FOR DEFENDANT:

Q. Where were you on the 2nd day of March of this year?
A. I was at my house on the other side of the river.
Q. Where is your house?
A. At a place known as Lukban.
Q. Please state whether that barrio of Lukban is within the barrio of Malunó.
A. Yes sir.
Q. Do you remember whether a Chinaman was buried at that place about that time?
A. Yes sir.
Q. How do you know that?
A. Yes sir; because when I arrived at the hacienda building about seven o'clock of that day I found the dead Chinaman there and I asked the policeman Siemon Bayad what was the matter and he told me that this was the Chinaman he had been guarding and that the Chinaman had died of the prevalent disease at that time.
Q. Did you help to bury the Chinaman?
A. The lieutenant told me to get men to help carry the Chinaman and also asked me to get a crow-bar to dig a grave.
Q. Did you do as he told you?
A. Yes sir; because he told me.
Q. Did you notice the face of the Chinaman while he was being buried?

A. Yes sir; I did.

208 Q. Please state whether or not the tongue of the Chinaman was sticking out of his mouth.

A. No sir.
Q. Please state whether or not the left eye was open.
A. No sir; it was closed.
Q. At what depth did you bury the Chinaman?
A. I did not measure the depth of the grave, but I think it was about a meter deep, more or less.

Q. That is all.

PROSECUTION: No cross-examination.

EULOGIO CASTELLANES, having been first duly sworn, testified as follows:

Direct examination by COUNSEL FOR DEFENDANT:

Q. I think you have already testified in this case here, have you not?
A. Yes sir.

Q. I think you testified that Mr. Picó and others came to your house on the 1st day of March and there found a Chinaman?

A. Yes sir.

Q. Please state whether or not the Chinaman was tied before he left the house.

A. No sir.

209 Q. Was the Chinaman tied when he left your house or was he not?

A. He was not.

Q. That is all.

PROSECUTION: No questions.

DEFENCE: The defence rests.

COURT: Do you want to present any evidence in rebuttal?

PROSECUTION: I wish the court would permit me to have an interview with the witnesses I intend to present in rebuttal, as I have had no time to consult with them.

COURT: The hearing of this cause is continued until eight o'clock tomorrow.

COUNSEL FOR DEFENDANT: Before the taking of the evidence in rebuttal counsel for the defendant would like to present a statement made by Mr. Claravall as to the post-mortem examination made by him upon the body of the deceased Chinaman Go Siengco at the request of the justice of the peace of this town, and which is attached to the preliminary investigation of the justice of the peace, which said document was identified during his testimony, and we would like to present the same as evidence for the defence and have it marked Exhibit "C" of the defence.

PROSECUTION: If the object of the defence is to introduce said document in evidence I may say that it would be a mere

210 repetition of what the witness has said and I, therefore, object to the admission of such evidence because it is absolutely unnecessary.

DEFENCE: My object in introducing in evidence the statement in question is to rebut any testimony given by Mr. Claravall in this court which is in conflict with the statement made by him in the justice of the peace court, and to show the variance existing between his statements as contained in the said document and the testimony given by him in this court.

COURT: The document Exhibit "C" is admitted in evidence. The court allows said document offered as evidence by counsel for the defence notwithstanding the fact that he has rested the case and notwithstanding the fact that counsel for the defence failed to point out in what particular point the testimony of Mr. Claravall given in this court differs from the statement made by him in the certificate in question.

MARCH 30TH, 1909—at 8.20 a. m.

Evidence in Rebuttal.

FRANCISCO BAQUIRAN, having been recalled, testified as follows:

211 Direct examination by the DISTRICT ATTORNEY:

Q. When you, Mr. Picó, Teves and the other fellows returned from the house of Castellanes, on your way back to the hacienda building, who carried Mr. Picó's shotgun?

A. Mr. Picó himself.

Q. Please state whether or not it is true that Mr. Picó delivered his gun to the mute, his servant, José Balayang.

A. No sir.

Q. Is it true that before you got to the incline there was some trouble between the boys and the Chinaman because the latter refused to walk?

A. No sir.

Q. Why did Mr. Picó call on the other two boys?

A. Yes sir; because the two men could not lift the Chinaman.

Q. Because the Chinaman refused to walk or because he could not walk?

DEFENCE: I object to the question.

COURT: Objection overruled.

DEFENCE: I withdraw the objection.

Q. Did the Chinaman walk or not?

A. No sir.

Q. Why?

A. Because he was weak.

212 Q. Is it true that the Chinaman wanted to escape?

A. No sir.

Q. Is it true that when you people got to the incline you remained with the Chinaman and the boys, and Mr. Picó, Mr. Teves and Mr. Rustant went on ahead to the hacienda building?

A. No sir. We all returned to the hacienda building together.

Q. Did you people ride ahead of the Chinaman on the way back to the hacienda building?

A. No sir; behind.

Q. Is it true that you asked Mr. Picó to confine the Chinaman in one of the rooms of his house at Malunó because you had no suitable place at your house?

A. No sir.

Q. That is all.

DEFENCE: No cross-examination.

NICASIO CLARAVALL, having been recalled by the prosecution, testified as follows:

Direct examination by the DISTRICT ATTORNEY:

Q. At the time you disinterred the body of the Chinaman Go Siengco with Mr. Banta and the other people and made an examination of the body after it was thoroughly washed, was
213 Dr. Sorarain present?

A. Yes sir.

Q. Did you have any conversation with him at that time with reference to the spots found on the body of the Chinaman Go Siengco?

A. Yes sir.

Q. Please state the conversation you had with him with reference to those spots.

A. During the course of the examination of the body I pointed out to Dr. Sorarian all the symptoms which the body presented and he called my attention to the protuberance of the rectum and to the spots on the body of the deceased and said that they were common to all dead bodies, but I then called his attention to the black and blue spots on the side and the lumbary region and he did not say a word.

Q. Did you have any conversation with him on the following day as to those spots?

DEFENCE: I object to the question.

COURT: Objection sustained.

Q. At the time the body was disinterred and after it was washed, did you address Dr. Sorarain calling his attention to the left eye and the tongue of the deceased?

A. I did not particularly, because he was also there and could see everything the same as I could.

Q. But was he present?

A. Yes sir.

214 Q. That is all.

GABRIEL MARAMAG, having been first duly sworn testified as follows:

I am a native and a resident of Ilagan, Province of Isabela, 37 years of age, married, and municipal president by occupation.

Direct examination by the DISTRICT ATTORNEY:

Q. Did you go in company with Mr. Claravall, Banta and the justice of the peace to the hacienda of Malunó for the purpose of disinterring the body of the Chinaman Go Siengco and holding an autopsy on the same?

A. Yes sir.

Q. Did you go there as municipal president?

A. Yes sir.

Q. And when they took the body out of the grave and examined the same, were you present?

A. Yes sir.

Q. Did you notice the eye of the dead Chinaman?
A. Yes sir. It was half open.
Q. You mean the left eye?
A. Yes sir.
Q. Did you notice the tongue particularly?
A. Yes sir.
215 Q. And how was it?
A. It was sticking out.
Q. Out of what?
A. Out of the mouth.
Q. Please describe it.
A. (The witness stuck out his tongue about two or three centimeters.)
Q. Was Dr. Sorarain present?
A. Yes sir.
Q. After the disinterment of the body, did you have any conversation with Dr. Sorarain with reference to the result of the examination?

DEFENCE: I object to the question.
COURT: Objection overruled.
DEFENCE: With our exception.

A. I had no conversation with him at the very time the body was disinterred, but on our return to this town I had some conversation with him on the road.
Q. Please state what was said during that conversation between you and him with reference to the body of the deceased.
A. I asked him what he thought about those black and blue spots, and he told me that one of them was due to a contusion but that the Chinaman had not died as the result of that contusion but of fright.
Q. Did he say anything else?
216 A. Yes sir. He said that it was unfortunate that the Chinaman had died.

Q. That is all.

DEFENCE: No further questions.
PROSECUTION: The prosecution rests.
DEFENCE: We have no evidence in rebuttal to present to the court.
COURT: Are you ready for argument?
(Both counsel made their arguments.)
COURT: I reserve my decision.

I, Juan S. Alano, a duly appointed and qualified official stenographer, do hereby certify:
That the foregoing testimony, consisting of one hundred and forty-four pages of typewritten matter, in the case of "The United States vs. Juan Picó, for murder" are a true and correct transcript of the stenographic notes taken by me on the day and hour that this case was tried.
Tuguegarao, Cagayan, P. I., May 5, 1909.
(Signed) JUAN S. ALANO,
Stenographer of the Court of First Instance of the First Judicial District.

217 Thereafter and on the 3rd day of April, 1909, the Court of First Instance of the First Judicial District, situated at Ilagan, Province of Isabela, Philippine Islands, presided over by the Hon. Richard Campbell, rendered a decision and judgment in the words and figures following, to-wit:

"Decision.

"In this cause, the accused Juan Picó, is charged with the crime of Assassination, as defined and *punished* in article 403 of the Penal Code, the complaint alleging:

'(1) That the said Juan Picó on or about the evening of the 1st day of March, 1909, at a place known as 'The Hacienda of Malunó', within the municipality of Ilagan, Province of Isabela, P. I., voluntarily, unlawfully and feloniously ordered one Francisco Baquiran to seize a Chinaman by the name of Go-Siengco, and instructed his two servants, named José Balayang and Hermogenes Ramos, to tie the said Chinaman, which said orders and instructions from the accused were by them immediately complied with; (2) That the said Chinaman Go-Siengco was tied by the neck and by the arms behind his back, pursuant to the said orders from the said accused Juan Picó, thus rendering it impossible for the Chinaman to defend himself, and the said accused, Juan Picó, at the said time and place, with the intention of killing the said Chinaman Go-Siengco, struck him several blows with a shotgun, as a result of which said blows the said Chinaman Go-Siengco subsequently died; all in violation of the statute in such cases made and provided.'

"To this charge the accused, when arraigned before this Court, plead not guilty and the case being called for trial on the 26th day of March, 1909, the defendant appeared in court in person
218 and was present continuously during the trial and represented by his attorneys, Messrs. Hawkins and Harvey, Mr. Vicente Nepomuceno, Fiscal of the First Judicial District, appeared on behalf of the State.

"It appears from the evidence in this case that about 11 o'clock on the night of March 1st, 1909, the accused Juan Picó, accompanied by Fernando Rustant, Máximo Teves, Francisco Baquiran, Hermogenes Ramos and a deaf-mute named José Balayan, all employees of the Hacienda of 'Malunó' of which the accused is Administrator, went to the house of Eulogio Castellanes which is situated on the said Hacienda of 'Malunó'; that, on arriving at the house of the said Eulogio Castellanes, the accused fired two shots from a gun which he carried; that he then called to Eulogio Castellanes to awake and to open the door; that Eulogio Castellanes obeyed, and when the door was opened the accused, Maximo Teves and Francisco Baquiran entered the house; that the accused asked Eulogio Castellanes if he had any guests in his house and that Castellanes answered that there was a Chinaman sleeping in another room; that the accused, then, entered the room where the Chinaman whose name appears to have been Go-Siengco was sleeping and called him three times, and the Chinaman, failing to get up as directed,

the accused struck him with the gun which he carried; that the Chinaman then awoke, and the accused attempting to strike him again with the gun, the Chinaman caught the gun and held it until Francisco Baquiran, coming between the accused and the
219 Chinaman separated them; that the accused, then, ordered Francisco Baquiran to bring the Chinaman outside and Baquiran brought the Chinaman downstairs and out of the house; that the accused then ordered the deaf-mute José Balayan and Hermogenes Ramos to tie the arms of the Chinaman, which they did, and the Chinaman refusing to walk in the direction of the 'casa-hacienda' where the accused lives, the accused struck him several times with his gun and that, on arriving at the said casa-hacienda, the Chinaman was in a state of collapse and could not speak as the result of the blows inflicted on him by the accused, and that the accused was obliged to awaken other employés and servants of the hacienda named Anacleto Duarte and Bienvenido Duarte, and one Guillermo to help carry the deceased up the stairs of the casa-hacienda; that the said Hermogenes Ramos, the man named Guillermo, Bienvenido Duarte, Anacleto Duarte and the deaf-mute carried the Chinaman upstairs and into the room of the said casa-hacienda which is called the "Cuarto de Orden' where the Chinaman died about four hours later or at about 4 o'clock on the morning of March 2nd; that at 8 o'clock on the morning of the said 2nd of March, by direction of the accused, the deceased Chinaman was buried on the Hacienda of 'Malunó,' and on the 5th of March, the body was exhumed by order of the Justice of the Peace of the Municipality of Ilagan, and Nicasio Claravall, President of the Board of Health of the said Municipality, assisted by a practicante named José Banta, made a post mortem examination of the body; that the body showed plainly the marks of the violent treatment to which the deceased man had been subjected at the hands of the
220 accused on the night in question.

"The defense admits the fact of the accused having gone to the house of Eulogio Castellanes on the night in question and having taken the Chinaman out of bed and brought him to the casa-hacienda, but denies that the deceased was tied or that the accused struck the deceased with the gun, except once very lightly in the house of Eulogio Castellanes, although the defense further admits that the accused carried the gun, on the way to the house of Eulogio Castellanes and that he discharged two or three shots in the air before he entered the house of Castellanes, they allege that the deceased Chinaman was placed in charge of Francisco Baquiran and José Balayan, and that José Balayan carried the gun on the way back to the casa-hacienda, thus attempting to show that whatever ill treatment the deceased may *may* have suffered on the night in question must have been inflicted by the mute Balayan and Baquiran.

Taking into consideration that the witnesses for the defense, Teves and Rustant, are employés of the accused, and having observed these men carefully while they were on the witness stand, the Court does not believe their statements on this point. The Court attaches great importance to the testimony of the deaf-mute José Balayan who manifested the utmost horror of what had taken place on the night

in question. He indicated how the Chinaman had been tied and how the accused had struck deceased with the gun, and his testimony bore all the evidences of truth. At the suggestion of the defense, the mother of the mute was sworn and acted as interpreter,
221 while the mute was testifying, the defense objecting to his wife Anacleta Magas, she having previously testified for the State.

"The defense laid great stress on their Exhibit 'A' which is a copy of the report sent by the State's witness Francisco Baquiran in his capacity as Teniente of the barrio to the Presidente of Ilagan and which purports to be an account of the death of the Chinaman Go-Siengco, and quoting the practicante of the hacienda who is the witness for the defense, Maximo Teves, to the effect that the Chinaman's death was due to cardiac affection.

"The testimony shows that Francisco Baquiran is Lieutenant of the barrio which is the Hacienda of 'Malunó' and that as Escribiente in the employ of the said Hacienda, he is under the direction and subject to the orders of the accused as Administrator of the said Hacienda. Baquiran explained that Teves wrote the body of the report, the defendant's Exhibit 'A' and that he, Baquiran merely made a clean copy of it and signed it at the request of Teves who is, as has been said above, the practicante of the Hacienda and consequently in the employ of the defendant.

"With respect to the testimony of Dr. Sorarain, the physician of the Hacienda of 'Malunó,' whose evidence was submitted by the defense for the purpose of discrediting the autopsy made by the President of the Ilagan Board of Health, the Court believes that, in so far as it is entitled to credence, his testimony tends to corroborate the allegations of the Government. This witness is
222 also in the employ of the accused and, as the testimony shows, issued a certificate when the accused was ordered to appear in Court and answer the complaint in this case, to the effect that the accused was ill and could not be disturbed. The Court ordered the apprehension of the accused and the said accused appeared in Court on the same day the certificate was issued by Sorarain, and was apparently in his usual health and was, thereupon, committed by the Court to the provincial jail to await the result of the trial.

"The defense has not attempted to offer any explanation of the action of the accused in taking the deceased from his bed at a late hour of the night and compelling him forcibly to go to the defendant's house without any reason and without warrant of law. Neither did they present any explanation of the hurried burial of the body on the following morning. It is true that the defense has sought to put the responsibility for the burial of the Chinaman on Francisco Baquiran as Teniente of the barrio, but the evidence shows, in the opinion of the Court, that Baquiran was as much subject to the accused as teniente of the barrio as escribiente. Besides, it is very improbable that Baquiran, even had he been acting independently as teniente, would have buried a strange man on the defendant's Hacienda without the authority of the accused as Administrator of the said hacienda.

"For this reason, and taking into account the testimony of the witnesses for the State on this point, the Court is convinced
223 that the deceased man was buried on the morning of the second of March at the instance and by direction of the accused for the purpose of concealing his responsibility for the deceased man's death.

"The Court, after weighing carefully all the testimony and after listening to the argument of Counsel for both sides and taking into account all the personal circumstances of the witnesses and their conduct on the witness stand, is convinced that the accused is guilty of the crime charged in the complaint beyond a reasonable doubt and without any qualifying circumstances.

"The Court, therefore, does find the accused so guilty, and does sentence him to suffer the penalty of cadena perpetua, and to be confined in the Insular Penitentiary known as Bilibid Prison in the city of Manila for the period of his natural life, and to suffer the accessory penalties of article 54 of the Penal Code; to indemnify the heirs of the deceased in the sum of one thousand (1,000) pesos and to pay the cost of this action.

"It is so ordered.

"Dated at Ilagan, Province of Isabela, this third day of April, 1909.

(Signed) "RICHARD CAMPBELL,
"*Judge Court of 1st Instance, First Judicial District.*"

224 Thereafter and on the 3rd day of April, 1909, counsel for the defendant, Juan Picó, notified the trial court in writing that he appealed from its decision to the Supreme Court of the Philippine Islands, which said appeal was subsequently allowed upon the giving of a bond in the sum of eight thousand pesos (P8,000), Philippine currency.

Thereafter and on the 9th day of June, 1909, the case was duly transmitted to the Supreme Court of the Philippine Islands, wherein it was received on the 18th day of June, 1909.

Thereafter and on the 12th day of August, 1909, counsel for defendant filed a motion for a new trial in the Supreme Court on the ground of newly-discovered evidence, which is as follows:

(Title of Court and Cause Omitted.)

"The undersigned attorneys appear again in behalf of the defendant in the above entitled cause and respectfully ask this honorable court to annul the judgment of the trial court and direct that the case be reopened and a new trial had.

"This motion is based upon the ground of newly-discovered evidence material to the defense, and which could not have been discovered prior to the hearing of the cause in the court of first
225 instance, notwithstanding the due diligence employed by the accused.

"In support of this motion counsel hereby submits for the con-

ideration of the court the affidavits of Juan Picó, Hermógenes Ramos and María del Pilar.

"Manila, August 11, 1909.

(Signed) "RAFAEL DEL PAN.
(Signed) JOSE VARELA Y. CALDERON."

(Title of Court and Cause Omitted.)

"Affidavit of Hermogenes Ramos.

"Hermogenes Ramos, having been first duly sworn, deposes and ays:

"I knew Juan Picó prior to the 1st of March, 1909. At that time was working for him at the hacienda of Malunó. During part of ne morning, the afternoon and part of the evening of said 1st day f March, 1909, I was in the woods engaged in my usual occupation. When I returned home I was riding a carabao, and while on the road rom the house of Eulogio Castellanes to the hacienda building I saw ne Chinaman Go-Siengco at a distance of about thirty fathoms, nore or less, from the house of Castellanes. The night was clear nd I was able to see the Chinaman walking apparently without any difficulty, accompanied by the mute José Balayan, 26 and about two fathoms behind them on the same road was Francisco Baquiran on horseback. At that time the China- nan was not tied nor was he tied at any time between that place nd the hacienda building. I did not tie him myself. I distinctly aw the mute José Balayan strike the Chinaman three blows with ne but end of the gun he then carried. The said blows were so eavy that the Chinaman fell to the ground, screaming in the agayan dialect. I did not understand what he said. He was icked up from the ground by the mute José Balayan, who is a very rong man. All this took place before they reached the incline on ne road between the house of Castellanes and the hacienda building. When I was a short distance from the Chinaman and the mute alayan, the latter called me by signs and asked me to dismount om my carabao. I then let the carabao loose and approached the id Balayan and this mute then told me that he had beaten the inaman with the but end of the gun and that the blows caused m to fall to the ground, the mute apparently believing that I had t seen him when he struck the Chinaman. Shortly afterwards e same mute, Balayan, in my presence and while I was there near m dealt another heavy blow at the Chinaman with the but end the gun on the right side and the Chinaman again yelled some- thing in the Cagayan dialect, which I did not understand. 7 This incident occurred on the same road and at a distance of about twenty meters from the place where the Chinaman l to the ground when the mute struck him the first three blows. hen they got beyond the incline and while near the hacienda ilding the Chinaman refused to walk and the boy Balayan pushed n along assisted by me. When we were near the hacienda building

two other men, Bienvenido Duarte and one Matías, came to help us to take the Chinaman along, and we altogether took the Chinaman up the steps into the house and left him in the order room. I then went to bed and early the next mroning I went to the fields. From the moment I first saw the Chinaman until I left him Anacleto Duarte did not help to pick him up from the ground nor to take him up the incline. I saw Anacleto Duarte on the 1st of March, 1909, in the kitchen of the hacienda building. Mr. Picó was together in a separate party with Rustant and Tebes, all on horseback. Two days later I saw the mute and he told me that the Chinaman had died as the result of the blows which he gave him with the but end of the gun; and finally I understood distinctly everything the mute said to me not only because I am accustomed to speak to him, both of us working at the same place for Mr. Picó, but because I have a brother who is also a mute and am used and accustomed to talk by signs.

228 "Manila, July 14, 1909.

(Signed) "HERMOGENES His x mark. RAMOS.

"Subscribed and sworn to before me this 14th day of July, 1909, affiant having exhibited to me his certificate of registration letter F. No. 1542419, issued at Tuguegaro on the 22nd day of April of the present year in the Province of Cagayan. The foregoing affidavit was read by me in Spanish to the affiant, Hermogenes Ramos, and translated to him in the Tagalog dialect by Vicente Albert, who explained to him in detail the contents of the same.

(Signed) "J. E. BLANCO,
[COURT SEAL.] *"Clerk, Supreme Court, P. I."*

(Title of Court and Cause Omitted.)

"Affidavit of Maria Del Pilar.

"I, Maria del Pilar, having been first duly sworn, declare:

"That I am the mother of the deaf-mute José Balayan; that I interpreted the testimony of the said José Balayan when he testified as a witness in the Court of First Instance of Ilagan, Province
229 of Isabela; that about a month and a half after the said Balayan gave his testimony in the court of first instance as aforesaid, the wife of Mr. Picó in my presence, and while at the stables of the hacienda building of Malunó, asked the said mute Balayan why he had testified against Mr. Picó in the Court of First Instance of Ilagan, and the mute answered that he did so for the reason that he was afraid of the Chinese and of the lieutenant of police of Ilagan, who had threatened to shoot him and hang him if he did not testify the way he did, and that had it not been for fear of these men he would not have testified against Mr. Picó; that Mrs. Picó put the question to the mute, who understood what she

meant and that the mute replied by signs the meaning of which I understood perfectly well, being accustomed as I am to speak to him; that no compulsion, threat or promise of any kind was made or offered by Mrs. Picó when she put the question to the mute, and that the latter did not answer the question influenced by any promise or threat of any kind; and finally that I have made this affidavit without any compulsion, threat or promise of reward, and that the same is true.

"Manila, August 9, 1909.

(Signed) "MARIA Her x Mark. DEL PILAR.

"Subscribed and sworn to before me this 9th day of
230 August, 1909, the affiant having exhibited no personal cedula, she being exempt therefrom by reason of her sex.

"The foregoing deposition was carefully read to Maria del Pilar and translated to her into the Tagalog dialect by me, I explaining to her in detail the contents of the same.

(Signed) "M. JURADO,
[COURT SEAL.] *Acting Deputy Clerk,*
Court of First Instance of Manila."

(Title of Court and Cause Omitted.)

"Affidavit of Juan Pico.

"I, Juan Pico, having been first duly sworn, declare:

"That I am the accused in the above entitled cause; that long after the hearing of this cause in the Court of First Instance of Ilagan, Province of Isabela, and the rendition of judgment, I found new evidence material to my defence in this case, which is necessary, and could not be discovered prior to the hearing of the case in the court of first instance, notwithstanding the great diligence exercised by me; that the newly-discovered evidence consists of the
231 testimony of Hermogenes Ramos upon the subject matter stated in his affidavit, dated July 14, 1909, taken before the Clerk of the Supreme Court of these Islands, and the testimony of Maria del Pilar upon the subject-matter stated in her affidavit of August 9, 1909, taken before the Assistant Clerk of the Court of First Instance of this city, Mr. Jurado; that the witness Hermogenes Ramos could not be found by the prosecuting officers prior to the hearing of this cause as it appears from the records of the Court of First Instance of Ilagon; that the facts testified to by Maria del Pilar only came to my knowledge long after the hearing of the case in the court of first instance and the rendition of the judgment of the trial court, as shown by her own affidavit, as aforesaid; that I have several other witnesses to establish the fact that the lieutenant Baquiran after he had testified in the court below said that what Mr. Rustant had stated in his testimony

was the truth and that he, Baquiran, should have testified to the same effect; that affiant is now unable to secure the affidavits of these witnesses by reason of the lack of suitable means of communication between this city and the barrio of Malunú of Ilagan and for the lack of time.

"In testimony whereof I have signed these presents in Manila this 10th day of August, 1909.

(Signed) "JUAN PICO.

232 "Subscribed and sworn to before me this 10th day of August, 1909, affiant exhibiting no personal cedula, he being exempt therefrom by reason of his age.

(Signed) "F. DE P. RODOREDA,

[NOTARY'S SEAL.] *"Notary Public.*

"My Commission expires December 31, 1910."

Thereafter and on the 23rd day of August, 1909, the Supreme Court made an order stating that the court would consider the motion for a new trial upon the decision of the case on its merits.

Thereafter and on the 8th day of November, 1909, counsel for defendant filed his brief in the Supreme Court of the Philippine Islands upon the following assignment of errors:

"Assignment of Errors.

"The Court of First Instance of Isabela erred in rendering its decision of April 3, 1909, convicting the accused Juan Picó instead of acquitting him of the complaint, as in justice and law should have been done."

Thereafter and on the 25th day of January, 1910, the Attorney-General filed his brief and the case was duly argued and submitted February 17, 1910.

233 Thereafter and on the 21st day of March, 1910, the Supreme Court rendered its decision, as follows:

"Decision.

"The defendant was convicted in the Court of First Instance of the Province of Isabela de Luzon of the crime of murder and sentenced to life imprisonment, accessories, indemnification and costs. He appealed.

"The court below found the following facts to have been established by the proofs:

'It appears from the evidence in this case that about 11 o'clock on the night of March 1st, 1909, the accused Juan Picó, accompanied by Fernando Rustant, Máximo Teves, Francisco Baquiran, Hermogenes Ramos, and deaf-mute named José Balayan, all employees of the Hacienda of 'Malunó' of which the accused is Administrator, went to the house of Eulogio Castellanes which is situated on the said Hacienda of 'Malunó'; that on arriving at the house of

the said Eulogio Castellanes, the accused fired two shots from a gun which he carried; that he then called to Eulogio Castellanes to awake and to open the door; that Eulogio Castellanes obeyed, and when the door was opened the accused, Máximo Teves and Francisco Baquiran entered the house; that the accused asked Eulogio Castellanes if he had any guests in his house and that Castellanes answered that there was a Chinaman sleeping in another room; that the accused, then, entered the room where the Chinaman whose name appears to have been Go-Siengco was sleeping and called him three times, and the Chinaman, failing to get up as directed, the accused struck him with the gun which he carried; that the Chinaman then awoke, and the accused attempting to strike him again with the gun, the Chinaman caught the gun and held it until Francisco Baquiran, coming between the accused and the Chinaman separated them; that the accused, then, ordered Francisco Baquiran to bring the Chinaman outside and Baquiran brought the Chinaman downstairs and out of the house; that the accused then ordered the deaf-mute José Balayan and Hermogenes Ramos to tie the arms of the Chinaman, which they did, and the Chinaman refusing to walk in the direction of the 'casa-hacienda' where the accused lived, the accused struck him several times with his gun, and that, on arriving at the said casa-hacienda, the
234 Chinaman was in a state of collapse and could not speak as the result of the blows inflicted on him by the accused, and that the accused was obliged to awaken other employees and servants of the hacienda named Anacleto Duarte and Bienvenido Duarte, and one Guillermo to help carry the deceased up the stairs of the casa-hacienda; that the said Hermogenes Ramos, the man named Guillermo, Bienvendio Duarte, Anacleto Duarte and the deaf-mute carried the Chinaman upstairs and into the room of the said casa-hacienda which is called the 'Cuarto de Orden' where the Chinaman died about four hours later or at about 4 o'clock on the morning of March 2nd; that at 8 o'clock on the morning of the said 2nd of March, by direction of the accused, the deceased Chinaman was buried on the Hacienda of 'Maluno,' and on the 5th of March, the body was exhumed by order of the Justice of the Peace of the Municipality of Ilagan, and Nicasio Claravall, President of the Board of Health of the said Municipality, assisted by a practicante named José Banta, made a post-mortem examination of the body; that the body showed plainly the marks of the violent treatment to which the deceased man had been subjected at the hands of the accused on the night in question.'

"The only question presented by the defence on this appeal is one of fact. The constant assertion of the accused is that the Government has not proved its case against him. It is conceded, in effect, however, that, if the testimony of the witnesses for the prosecution is true, the defendant is guilty. That he is guilty, if the witnesses of the Government are to be believed, is beyond possibility of doubt. The real question resolves itself ultimately, then, into the question of the credibility of the witnesses. We have said in a recent case that where there is a conflict in the testimony of witnesses, the peculiar province of the trial court is to resolve the

question of credibility, and, unless there is something in the record impeaching by fair interpretation the resolution of the trial court in relation to that question, this court will assume that he
235 acted fairly, justly and legally in the exercise of that function. We have read the evidence adduced on the trial with great care. The testimony of the witnesses Castellanes, Baquiran, Bienvenido Duarte, Anacleto Duarte, Magas, Balayang, Claravall, Banta, Bayad and Eugenio, produced by the prosecution, is clear, direct, unequivocal, and powerful, disclosing no elements of untruth. Their probative force is overwhelming. They support in the very clearest and most forcible manner the findings of the trial court.

"We have only one criticism of the judgment below. We are convinced that the court, in imposing the penalty, should have taken into consideration in favor of the accused the extenuating circumstance described in Article 9, subdivision 3, of the Penal Code, namely, that 'the delinquent had no intention of committing so grave an injury as that which he inflicted.' There not having been present any aggravating circumstance, the penalty should have been imposed in its minimum degree.

"The judgment of the court below is hereby modified and the defendant is hereby sentenced to Seventeen (17) years, four (4) months and one (1) day of cadena temporal, to the accessories provided by law, to indemnify the heirs of the deceased in the sum of one thousand pesos (P1,000) and to pay the costs of the trial. So modified the judgment is affirmed, with the costs of this instance against the appellant.

"The defendant makes a motion for a new trial, alleging the discovery of new and material evidence which could not have been discovered before the trial in the court below by the exercise
236 of reasonable diligence and which is of such a character as probably to change the result. In support of his motion he presents his own affidavit and the affidavits of Hermógenes Ramos and María del Pilar. In his statement Ramos swears that on the night in question he was riding a carabao upon the road along which the Chinaman, Go-Siengco, was being conducted from the house of Castellanes to that of the accused; that the Chinaman walked well; that he saw Balayan, the deaf-mute, a witness for the prosecution, suddenly strike the Chinaman three heavy blows with the but of a gun, on receiving which the Chinaman fell to the ground; that Balayan picked him up and they passed on toward defendant's house; that affiant approached closer and Balayan told him that he had struck the Chinaman three blows with his gun; that soon thereafter Balayan again struck the Chinaman in the right side with his gun, causing the Chinaman to cry out with pain; that the next morning Balayan told him that the Chinaman was dead, having succumbed to the blows which he had given him the night before. María del Pilar states in her affidavit that she is the mother of Balayan and that she heard him tell the wife of the accused after the trial, in response to the question why he had sworn against her husband at the hearing of the cause, that he had sworn against the accused for fear of some Chinaman and the sergeant of

police of Ilagan, who told him that they would shoot him and hang him unless he so testified.

237 "We do not believe that the motion for a new trial ought in justice to be granted. It has been held by this court that a new trial will not be granted 'unless the following conditions exist: 1. The evidence must have been discovered since the trial. 2. It must be such that with the use of reasonable diligence on the part of the defendant it could not have been secured on the former trial. 3. It must be material and not merely collateral or cumulative or corroborative or impeaching. 4. It must be such as ought to produce a different result on the merits on another trial. 5. It must go to the merits, and not rest on merely a technical defence.' United States vs. Luzon, 4 Phil. Rep., 343.

"In the case at bar it was fully known to the defendant that Hermogenes Ramos was a very material and important witness since he was one of those, according to the defendant's own proof, who accompanied the Chinaman from the house of Castellanes to that of the accused. No effort whatever was made by the defendant to secure the attendance of this man as a witness on the trial. Moreover the evidence which the defendant offers to present on the occasion of a new trial is contradictory in the extreme to the evidence which he actually presented on the trial at which he was convicted. There it was contended stoutly, and evidence was adduced by him to support that contention, that the Chinaman was not assaulted or struck by any person in any way from the time he left the house of Castellanes until he reached that of the accused.

238 In corroboration of this the defence presented evidence tending to show that the Chinaman died a natural and not a violent death. In addition, while Hermogenes, in his affidavit, states that he joined those who were conducting the Chinaman only after they had progressed a considerable distance on the way to the house of the accused, having inadvertently come upon them while he, mounted upon a carabao, was traveling upon his own affairs, nevertheless it appears from the testimony of defendant's witnesses on the trial that he, Hermogenes, was present as one of the companions of the accused from the time he left the casa hacienda in search of several malechores until he returned there with one lone Chinaman roughly dragged from peaceful slumber.

"The motion for a new trial is denied.

"After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter let the case be returned to the court whence it came for execution.

"So ordered.

(Signed) "SHERMAN MORELAND.

"We conform:

(Signed) "C. S. ARELLANO, (*C. J.*)
"FLORENTINO TORRES,
"VICTORINO MAPA,
"E. FINLEY JOHNSON,
"A. C. CARSON,
"Associate Justices."

239 Thereafter and on the 4th day of April, 1910, counsel for the defendant excepted in writing to the decision of the court and filed a motion for rehearing, which said motion was subsequently denied by the Supreme Court on July 16, 1910.

Thereafter and on the 19th of July, 1910, final judgment was entered in the Supreme Court of the Philippine Islands as follows:

"THE UNITED STATES OF AMERICA,
"Supreme Court of the Philippine Islands:

File No. 5487.

"THE UNITED STATES, Plaintiff and Appellee,
versus
JUAN PICO, Defendant and Appellant.

Judgment.

July 19, 1910, Judgment Book No. —.

"The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for Judgment having been filed on the 21 day of March, A. D. nineteen hundred and ten.

"By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Isabela, dated the 3 day of April, nineteen hundred and nine, and from
240 which the above-entitled appeal was taken, be, and the same is hereby, modified, and the defendant is sentenced to seventeen years four months and one day of cadena temporal, with the accessories provided by law, and to indemnify the heirs of the deceased in the sum of one thousand pesos, and thus modified the judgment is otherwise affirmed, with the costs of this instance, amounting to P24.00, Philippine currency, to be collected by the trial court by execution. And the motion for a new trial is accordingly denied.

"It is further ordered that the said cause be remanded to the Court of First Instance.

(Signed) "J. E. BLANCO,
[COURT SEAL.] *"Clerk of the Supreme Court of the Philippine Islands."*

Thereafter and on the 20th day of July, 1910, counsel for the defendant excepted to the decision of the court upon the merits of the case and to the order overruling defendant's motion for a new trial. On the same day the defendant duly excepted to the final judgment entered in the said cause.

Thereafter and on the 27th day of July, 1910, counsel for the defendant filed a motion in the Supreme Court of the Philippine Islands asking that the proceedings be dismissed and the judgment

rendered set aside on the ground that the defendant had been
241 sentenced to the penalty of cadena temporal and accessories provided by law, indemnification and costs, which said penalty, under the decision of the Supreme Court of the United States of America in the case of Paul A. Weems, Plaintiff in Error, vs. The United States, was a cruel and unusual punishment and, therefore, repugnant to the Constitution of the United States.

The foregoing motion was set down for hearing and regularly argued by counsel, and on the 11th day of February, 1911, the Supreme Court rendered the following decision:

"Decision on Motion.

"This is a motion to dismiss the information filed in this case and all the proceedings based thereon, including the modified sentence of 17 years, 4 months, and 1 day of cadena temporal together with the accessory penalties prescribed by law which was imposed upon the defendant and appellant by this court upon his conviction of the crime of assessinato (assassination, murder in the first degree).

"The ground on which this motion is based is the alleged repugnancy of the penalty thus imposed, as also of the penalty prescribed by the Penal Code for the crime of which the defendant was convicted, to that provision of the Philippine Bill of Rights which forbids the infliction of cruel and unusual punishments.

242 "In support of this contention counsel for defendant cites and relies upon the case of Weems vs. U. S. decided in the Supreme Court of the United States May 2nd, 1910. In that case the Court held that the penalty of cadena temporal, which is prescribed by the Philippine Penal Code for the crime of falsification of a public document by a public official, is a cruel and unusual punishment forbidden by the Philippine Bill of Rights; and counsel insists that the ratio decidendi leads inevitably to the conclusion that the penalties of cadena temporal and cadena perpetua, as defined and prescribed by the Code, are essentially and inherently cruel and unusual punishments, the infliction of either of which as a penalty for any crime, whatever its nature may be, is prohibited by the Philippine Bill of Rights.

"There are at present several applications for writs of habeas corpus awaiting the final resolution of this court, wherein the petitioners, now serving sentences upon conviction of one or another of the various offences for which these penalties are prescribed by the Code, seek to obtain their discharge on similar grounds to those on which this motion is based; and we are informed that in the event of a holding by this court favorable to the contention of counsel in this case, all of those now serving such sentences will demand their discharge. Some of the crimes, other than the
243 falsification of public documents by a public official, for which the penalties of cadena perpetua and cadena temporal are prescribed by the Code are: treason; piracy; parricide; assassination; counterfeiting money; giving false testimony against an accused person, if such person should have been sentenced to death

or cadena perpetua and such sentence should be executed; arson, where human life is knowingly endangered; unlawful detention, with refusal to disclose the whereabouts of the prisoner or to prove that he has been set at liberty; and robbery with homicide or grave personal injury. The last official report of the Director of Prisons of the Philippine Islands which is before us discloses that there were at the date of that report serving sentences of cadena temporal or cadena perpetua, in the various penal institutions in these Islands, 256 persons convicted of assassination; 57 persons convicted of parricide; 160 persons convicted of robbery with homicide, rape or other grave personal injuries; 4 persons convicted of arson where human life was knowingly endangered; 4 persons convicted of abduction; and 4 persons convicted of kidnapping. Since 'an unconstitutional law is void and is no law, an offence created by it is no crime', and 'a conviction under it is not merely erroneous but is illegal and void can not be a legal cause of imprisonment', (Ex parte Siebold, 100 U. S. 371) it will readily be seen that a holding
244 by this court that the decision in the Weems case involves a declaration that the various provisions of the Penal Code prescribing either the penalty of cadena perpetua or that of cadena temporal are repugnant to the Philippine Bill of Rights, and that this court is bound thereby, would result in a general jail delivery of all those heretofore convicted of many of the gravest and most heinous offences defined and penalized by law; and would be substantially equivalent to a proclamation of amnesty in favor of all those who have heretofore committed such crimes and have not yet been brought to trial, or who may commit them hereafter until such time as the legislature may be able to reform the Penal Code.

"Confronted as we are with the knowledge that consequences so far reaching and disastrous must result from a holding favorable to the contention of counsel on this motion, it is manifestly our duty rigidly to restrict the application of the doctrine laid down in the Weems case to cases wherein the ratio decidendi in that case is clearly applicable; and to decline to be bound by inferences drawn from observations and comments contained in the opinion in that case which appear to be based upon a misapprehension of facts, or upon assumed facts which do not accord with the facts in the cases brought before us.

"We may dismiss without much discussion any sugges-
245 tion that under the doctrine laid down in the Weems case penalties involving imprisonment with or without hard labor, for life, or for a long period of years followed by surveillance of the discharged convict for life, are essentially and inherently cruel and unusual punishments without regard to the crime for which such penalties are prescribed. As we understand the opinion in the Weems case it rests the conclusion that the penalty prescribed and imposed in that case was a cruel and unusual one, principally and more especially on the proposition that by relation to the crime of which the defendant was convicted (that is to say the falsification of a public document by a public official) imprisonment for not less than twelve years, followed by surveillance by the authorities of the discharged

convict for life, is a penalty so excessive as to justify and require a judicial declaration that the law prescribing it is repugnant to the Philippine Bill of Rights. But there is nothing in the decision in that case which would justify the inference that the court was of opinion that imprisonment, with or without hard labor, for life or for a long term of years followed by the life surveillance of the discharged convict, is to be regarded as a cruel and unusual punishment when prescribed for such crimes as treason, parricide, assassination, and other heinous offences, or even for less grave offences when those are marked by attendant circumstances which, in the sound
246 discretion of the legislature, justify and necessitate the imposition of extraordinarily harsh penalties to secure their repression. On the contrary, the opinion of the court clearly recognizes the legislative power to prescribe such penalties and even the death penalty in proper cases, and disclaims any intention to express anything which would deny the 'wide range' of power that the legislature possesses to adapt its penal laws to conditions as they exist, and punish the crimes of men according to their forms and frequency.'

"But counsel's main contention as to the invalidity of the code penalties of cadena perpetua and cadena temporal is based on inferences drawn from comments of the court in the opinion in the Weems case upon the provisions of the Philippine Penal Code which prescribe that convicts sentenced to either of these penalties will be employed at hard and laborious work or tasks ('Se emplearán en trabajos duros y penosos') and shall always carry a chain at the ankle, hanging from the waist, ('llevarán siempre una cadena al pie, pendiente de la cintura'). We think, however, that admitting that the comments of the court would justify the inference that it was of opinion that these provisions of the Code, as construed by the court, prescribe conditions which would render any penalty affected thereby a cruel and unusual punishment, we must, nevertheless, decline to hold ourselves bound by the further inference, not
247 expressly drawn by the court itself, that the penalties of cadena perpetua and cadena temporal, as prescribed by existing law in these Islands, are inherently and essentially cruel and unusual punishments:

"1st. Because the court in its opinion expressly admitted that it was not fully advised as to the true meaning and effect of these provisions of the Spanish Penal Code, and we are satisfied that, in this regard, it labored under a misapprehension of fact as to certain matters not essential to the decision of the Weems case, but of vital importance in any general discussion of the inherent and essential characteristics of the code penalties of cadena perpetua and cadena temporal. In the course of the opinion the writer says: 'It may be that even the cruelty of pain is not omitted. He must bear a chain night and day. He is condemned to painful as well as hard labor. What painful labor must mean we have no exact measure. It must be something more than hard labor. It may be hard labor pressed to the point of pain." But the Spanish original is not accurately or correctly rendered by the words 'hard and painful labor.' On this

point the court was doubtless lead into error by the inaccurate and erroneous rendering of the original Spanish in the English translation of the Philippine Penal Code printed at the Government Printing Office at Washington, in June, 1900, for the Division of Customs and Insular Affairs. In this translation the words 'se emplearán en trabajos duros y penosos' were rendered as follows: 'They shall be employed in hard and painful labor.' In this connection,
248 however, the English word 'painful' is not synonymous with the Spanish word 'penoso.' The more usual and important meaning of the Spanish word 'penoso,' as given by both the Diccionario de la Lengua Castellana por Real Academia Española and the Diccionario Enciclopédigo de la Lengua Castellana, is 'trabajoso,' que causa pena ó cuesta gran dificultad.' (Laborious, that which causes hardship or involves great difficulty.) While the word pena from which the adjective is derived is broad enough to include every form of disagreeable sensation, physical as well as mental or spiritual, and this in some connections it may properly be said to connote either physical or mental pain or distress (dolor or pesar), in ordinary use it serves as a synonym for the word 'dificultad' (difficulty or hardship) as in the illustrative phrase given by both the abovementioned dictionaries, 'Con mucho pena ha terminado este negocio.' (With much difficulty I have terminated this business or undertaking.) If the idea of actual suffering or pain, either physical or mental, is uppermost in the mind of a writer in Spanish he would tend to the use of the more specific words dolor or pesar, the tendency in the use of the word pena being to express the idea of difficulty or hardship in the broader signification of these words, without emphasizing or even conveying the idea of actual mental suffering or physical pain. A literal rendering into English of the Spanish text would be as follows: 'They shall be employed in hard
249 and laborious labor,' or 'They shall be employed in hard and laborious tasks.' A more liberal rendering, which perhaps conveys the meaning more accurately, would be as follows: 'They shall be employed at the hardest class of labor.' The use of the adjectives 'duros' and 'penosos' qualifying the same word has an intensive effect and marks a distinction between the hardest class of labor which may be required of prisoners convicted of the gravest crimes in the contemplation of the Spanish legislator, and the relatively lighter tasks prescribed for less grave offenders. The words 'duros' and 'penosos,' as used in this connection, carry with them no suggestion of physical or mental pain beyond that which is necessarily involved in the performance of enforced hard and laborious tasks by convicts. That this was the construction placed on the language of the Code by the Spanish prison authorities prior to the American occupation, and that it is the construction adopted by the executive authorities under the present sovereignty may be fairly inferred from the general provisions of the prison regulations in force under both administrations and the uniform practice in the penitentiaries in these Islands.

"The Court above also seems to have been of opinion that 'the cruelty of pain' is involved in the provisions of the code prescribing that those sentenced to cadena 'shall always carry a chain at the

ankle, hanging from the waist.' But it must be apparent that
while the carrying of a chain in this manner may and un-
250 doubtedly does add to the ignominy and degradation of
the principal penalty, the question of its painfulness, physical painfulness, must depend on the kind of chain used for this purpose. While the use of chains has fallen into disuse under the American occupation of these Islands, most of the members of this court have seen and handled chains such as were formerly in use in the Spanish prisons, and we do not think that the carrying of a chain of the size and weight and shape of those formerly employed necessarily resulted in the infliction of physical pain. The Code did not prescribe the kind of chain to be used, but certainly it could not have been intended that the shape or size or weight of the chain itself should be such as to impede materially the movements of a convict engaged in hard labor beyond the jail limits. The Code confers no express authority to inflict physical pain as a necessary part of the penalty of cadena, and under the system of judicial supervision of the penal institutions which existed prior to the American occupation of these Islands, a convict upon whom a thoughtless or brutal jailer placed chains capable of inflicting physical pain, would undoubtedly have been entitled to prompt and speedy relief.

"The cruelty of pain—physical pain—not being necessarily involved in the application of these provisions of the Code, it is quite clear that the requirement as to hard labor does not render the code penalties of cadena inherently and essentially cruel and unusual
punishments, and perhaps the same may be said as to the
251 provisions for the carrying of chains by convicts sentenced
to cadena, since the use of chains, at least as a measure of security, is not unknown in the United States. As to this latter proposition, however, we deem it unnecessary to make an express ruling in view of the fact that, as will hereafter be shown, the requirement as to the carrying of chains by these convicts has long since fallen into disuse, and become obsolete.

"2nd. Because the carrying of chains by convicts sentenced to cadena has long fallen into disuse, and in fact no such punishment has been inflicted since the earliest days of the military occupation of the Philippines by American troops.

"We are not definitely informed, nor have we been able to ascertain through official reports or other similar channels open to our investigation, in what manner or by virtue of what authority the penitentiary officials originally adopted the practice of neglecting or declining to comply with the code provisions in this regard. But since the practice originated while these penitentiaries were administered by the military authorities, through officers of the army of occupation duly detailed for that purpose, it may reasonably and fairly be presumed that these officers were duly authorized by the orders under which they were acting thus to disregard the provisions of municipal law which were continued in force in these Islands by
the Commander of the American forces in his 'Military
252 proclamation' dated Headquarters, Department of the Pacific, August 14, 1898. Manifestly, no lawful order so to do could

at that time have emanated from any other source than the Commander of the forces of military occupation who issued that proclamation, his successors in authority or superior authority. An order from the Commander of the forces of military occupation directing those charged with the execution of sentences of cadena to disregard the provisions of municipal law as to the carrying of chains by prisoners under their charge, had the effect, by necessary implication of abrogating these provisions or, at least, of suspending them until such an order should be lawfully rescinded. No such rescinding order appears to have been issued, and the issuance of such an order has, of course, been prohibited since the time when the constitutional guarantee was extended to these Islands, if we assume that a requirement as to the carrying of chains by convicts sentenced to cadena would be in violation of the prohibition against the infliction of cruel and unusual punishments. It seems clear, therefore, that those provisions of the penal code prescribing the carrying of chains are not in force at this time and can not in any way affect the validity of the principal penalty of which they at one time formed a part. We think that there can be no doubt that the officer vested with supreme command during the military occupation of these Islands, with authority to issue the above mentioned proclamation, had authority to issue such prison
253 regulations as he might deem proper; that his order establishing such regulations had all the force of law; and that in so far as such regulations might conflict with any law theretofore in force, these regulations, as the last expression of the will of the military commander, abrogated the conflicting provisions of the prior law, continued in force by virtue of his military proclamation. The chief difficulty which has confronted us in arriving at our conclusion is the fact that we have been unable to find any record of the promulgation of an order directing the discontinuance of the use of chains in the penal institutions of the Islands, although we have been furnished with copies of all the published orders of the various officers in command of the American forces throughout the period of military occupation. But the preservation of the original order, or of written or printed copies of the original order is not vital. As we understand it, the legality, force and efficacy of the orders of the military commander did not depend on the form in which they were couched; and doubtless an oral order, formally issued and so promulgated as to charge those affected thereby with knowledge of its existence was not less binding upon them and all others concerned, than an order in writing would have been. The vital question is whether such order was in fact issued, and under all the circumstances we think that we are justified in concluding that it was.

"But however this may have been, we do not think that an
254 obsolete provision of the Spanish Penal Code which is not now enforced and has not been enforced since the Islands were brought under the present sovereignty; which was not enforced at the time when the constitutional guarantee against the infliction of cruel and unusual punishments was inserted in the Philippine

Bill of Rights; and which there is no lawful authority to require the prison officials to put in force in the future, if the enforcement be held to involve the infliction of a cruel and unusual punishment, should at this late day be given such vital force as to invalidate many of the most important provisions of existing law, and thus impose upon this court the duty of setting at liberty in this community hundreds of the vilest criminals and of proclaiming the immunity of all those who have heretofore been guilty of many of the gravest and most heinous offences known to the law.

"We understand that not only has the use of chains been abandoned since the earliest days of the occupation of these Islands by the military forces of the United States, but that, since that time, the treatment of convicts sentenced to cadena has not been differentiated by the executive and prison authorities from that of the ordinary convict sentenced to hard labor for a term of years; so that since that time the provisions of the penal code prescribing specially harsh conditions and accessory penalties annexed to the principal penalty of imprisonment imposed upon such convicts, have fallen
255 into disuse so far as their enforcement depends upon these authorities. It would seem, therefore, that just as the provision for the use of chains must be deemed to have been abrogated or at least to have become obsolete and unenforceable, so also must all of the provisions of the penal code prescribing special conditions and accessory penalties annexed to the principal penalties of cadena be held to be abrogated or at least to have become obsolete and unenforceable, in so far as they impose upon the executive or prison authorities a duty to treat convicts sentenced to cadena differently from ordinary convicts sentenced to hard labor for a term of years. We do not deem it necessary, however, to pass upon this proposition at this time, partly because our knowledge of the facts does not permit us to lay down the statement of fact upon which it rests with the same degree of certainty as we are enabled through official reports to say that the use of chains has become obsolete; and partly because, for the purposes of a decision on this motion, we do not think a ruling in this regard is necessary. The penalty of cadena temporal, even if it be granted that all the code provisions relating thereto are still in force, when imposed upon a convict of the crime of assessinato, would not, in our opinion, be a cruel or unusual punishment, unless it is rendered so by the single provision touching the carrying of chains, and as we have shown, this provision has undoubtedly been abrogated or, at least, has long since become obsolete and unenforceable.

256 "Nothing which has been said should be understood as an attempt on our part to set up and maintain our opinion against the opinion of that great tribunal which rendered the decision in the Weems case. We accept, as we should accept, the doctrines and principles laid down in that case as of imperative and controlling authority in this jurisdiction, and shall unhesitatingly apply these doctrines and principles in all cases involving the application of the code provisions prescribing the penalty of cadena for offences similar in nature to that for which Weems was convicted.

As we understand the reasoning of the opinion in the Weems case, it imperatively declares that a law prescribing the code penalty of cadena for an offence as to which there is nothing 'to give character and degree' other than the seeking of felonious gain is invalid, because it prescribes a penalty so excessive as to justify a judicial declaration that it is a cruel and unusual punishment; and we are satisfied, from the reasoning of the opinion, that the court would have arrived at the same conclusion even if it had been made to appear to it that 'the cruelty of pain' is not necessarily involved in the provisions touching enforced labor and the wearing of chains or that the treatments to which convicts sentenced to cadena may be subjected in no wise differs from that to which prisoners sentenced to imprisonment for a term of years with hard labor are subjected.

(Signed) "A. C. CARSON.

257 "We conform:

(Signed) "C. S. ARELLANO, (*C. J.*)
"VICTORINO MAPA,
"SHERMAN MORELAND,
GRANT T. TRENT,"
(*Associate Justices.*)

258 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 5487.

Criminal Cause No. 396 of the Court of First Instance of Isabela.

THE UNITED STATES, Plaintiff and Appellee,
versus
JUAN PICO, Defendant and Appellant.

Now comes Juan Pico, the defendant in the above-entitled cause, and states:

I.

That final judgment has been rendered in this cause affirming the sentence of the Court of First Instance of the Province of Isabela, modifying the penalty and sentencing the accused for the crime of murder to the penalty of 17 years 4 months and 1 day of cadena temporal, with the accessories provided by law, to indemnify the heirs of the deceased in the sum of one thousand pesos (P1,000). Philippine currency, and to pay the costs. All of this in violation of the Philippine Bill, that is to say, the Act of the United States Congress of July 1st, 1902, as appears from the attached assignment of errors.

II,

259 That on the 11th day of February, 1911, there was denied by this court the motion of counsel for defendant filed on the 26th of July, 1910, asking for the dismissal of these proceedings and the setting aside of the judgment on the ground that the same was unconstitutional and had been rendered in violation of the Philippine Bill, that is to say, the Act of the United States Congress of July 1st, 1902, for the reason that the penalty imposed was cruel and unusual, as held by the Supreme Court of the United States in the case of Paul A. Weems, Plaintiff in Error, versus The United States.

III.

Wherefore, defendant prays that he be permitted to prosecute a Writ of Error from the Supreme Court of the United States to the Supreme Court of these Islands, the same to operate as a supersedeas of the judgment, upon the giving of a bond in such sum as may be deemed sufficient, with the condition provided by law, and defendant further prays that he be admitted to bail during the pendency of the said Writ of Error to review the decision of this court upon the attached assignment of errors.

Defendant also prays that the record and proceedings in this case be translated into the English language in accordance with the rules of the Supreme Court of the United States.

Manila, P. I., March 22, 1911.

(Signed) JOSE VERELA Y CALDERON.

260 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 5487.

Criminal Cause No. 396 of the Court of First Instance of Isabela.

THE UNITED STATES, Plaintiff and Appellee,
versus
JUAN PICO, Defendant and Appellant.

Assignment of Errors.

Now comes the defendant and respectfully submits that in the record and proceedings, decision and final judgment of the Supreme Court of the Philippine Islands in the above-entitled cause there is manifest error, to-wit:

I.

The Supreme Court erred in holding that the evidence of record was sufficient to convict the defendant for the reason that it has practically construed the law so as to deprive the defendant of his

liberty, and has actually deprived the defendant of his liberty, without due process of law; as the law in such cases imposes upon the court the obligation to acquit the defendant when there is, as in this case, a reasonable doubt as to the guilt of the defendant.
261 All in violation of the Philippine Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

II.

The Supreme Court erred in refusing to pass upon the credibility of the witnesses who testified in the court of first instance, which practically amounts to depriving the defendant of his liberty, and the court has actually deprived him of his liberty, without due process of law, for due process of law gives the defendant on appeal the right to have the judgment of the trial court reviewed, and imposes upon the Supreme Court the duty of reviewing all questions of fact and law; and in the present case the court has refused to review the questions of fact by refusing to pass upon the credibility of the witnesses. All in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

III.

The Supreme Court erred in refusing to pass upon the credibility of the witnesses who testified in the court of first instance, which practically amounts to a construction of the law so as to deprive the defendant of the equal protection of the law, and the court has actually denied such protection to the accused in this case, for the reason that it has heretofore passed upon the credibilty of witnesses in a large number of cases submitted to it from the time the court was organized down to rendition of the decision in this cause.
262 All in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

IV.

The Supreme Court erred in refusing to pass upon the credibility of the witnesses who testified in the court of first instance upon the assumption that the court of first instance acted in an impartial, just and legal manner in the exercise of its functions, which practically amounts to a denial of defendant's right to the equal protection of the law, for the reason that in a large number of cases heretofore decided by this court, similar to the case at bar, its judgments have not been based upon such assumption. All in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

V.

The Supreme Court erred in convicting the defendant of the crime of murder and of the killing of the Chinaman Go Siengco without first finding that the death of the Chinaman was the necessary result of the blows alleged to have been inflicted by the accused

upon the said Chinaman, no such finding having been made, neither by the court of first instance nor by the Supreme Court, such a finding being necessary to a decision of the case for the reason that it is alleged in the complaint that the defendant, "with the intention of killing the said Chinaman Go Siengco, struck him several blows with a shotgun, as a result of which said blows the said
263 Chinaman Go Siengco subsequently died"; and that a judgment in a criminal case must strictly conform to the allegations and proof. All of which amounts to depriving the defendant of his liberty without due process of law, since the law requires that every conviction must be strictly in conformity with the facts pleaded and proved; all in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

VI.

The Supreme Court erred in overruling defendant's motion for a new trial upon the ground of newly-discovered evidence, basing its decision on a previous ruling wherein the court makes a distinction as to the evidence admissible in such cases, when the law now in force makes no such distinction. All of which is equivalent to depriving the defendant of his liberty, and does actually deprive him of his liberty, without due process of law; in violation of the Act of the United States Congress of July 1st, 1902.

VII.

The Supreme Court erred in overruling defendant's motion for a new trial upon the ground of newly-discovered evidence, which action on the part of the court practically amounts to a denial of defendant's right to compel the appearance of witnesses in his own defence, since it appears in the record that Hermogenes Ramos was searched for and could not be found at the time of the trial in the court of
264 first instance. All of this in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

VIII.

The Supreme Court erred in holding that the evidence was sufficient to convict the defendant, which practically amounts to depriving the defendant of his liberty without due process of law, as the law in such cases directs that the defendant shall be acquitted if there is a reasonable doubt as to his guilt. All of this in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

IX.

The Supreme Court erred in refusing to pass upon the credibility of the witnesses who testified in the court of first instance, which action on the part of the court practically amounts to holding the defendant to answer to a criminal charge without due process of law, which said due process of law gives the defendant a right to

appeal and have the judgment of the trial court reviewed, and imposes upon the Supreme Court the duty of reviewing all questions of fact and law, and in the case at bar the Supreme Court has refused to review the questions of fact by neglecting to pass upon the credibility of the witnesses. All of this in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

265 X.

The Supreme Court erred in refusing to pass upon the credibilty of the witnesses who testified in the court of first instance, basing its decision upon the assumption that the court of first instance acted in an impartial, just and legal manner in the exercise of its functions, which practically amounts to holding the defendant to answer to a criminal charge without due process of law. All in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

XI.

The Supreme Court erred in convicting the defendant of the crime of assassination and of the killing of the Chinaman Go Siengco without first finding that the death of the said Go Siengco was the necessary result of the blows alleged to have been received from the accused, no such finding having been made either by the court of first instance or by this court, notwithstanding the fact that the same is a necessary finding to a decision of the case for the reason that it is alleged in the complaint that the defendant, "with the intention of killing the said Chinaman Go Siengco, struck him several blows with a shotgun, as a result of which said blows the said Chinaman Go Siengco subsequently died"; and that a judgment in a criminal cause should strictly conform to the allegations and proof. All of which practically amounts to holding the defendant to answer to a criminal charge without due process of law,
266 since the law requires that every conviction must be strictly in conformity with the facts pleaded and proved. All this in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

XII.

The Supreme Court erred in overruling the motion for a new trial on the ground of newly-discovered evidence, basing its decision on a former ruling in which a distinction is made as to the evidence admissible in such cases, when the law itself does not make any such distinction, which practically amounts to holding the defendant to answer to a criminal charge without due process of law; in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902.

XIII.

The Supreme Court erred in overruling and denying the motion for a new trial on the ground of newly-discovered evidence, which

practically amounts to denying to the defendant the right to compel the appearance of witnesses in his defence, and to holding him to answer to a criminal charge without due process of law, since it appears from the record that Hermogenes Ramos was searched for and could not be found and presented as a witness at the trial in the court of first instance. All of this in violation of the Philippines Bill, that is to say, the Act of the United States Congress of
267 July 1st, 1902.

XIV.

The Supreme Court erred in imposing upon the defendant the penalty of cadena temporal, which said penalty is essentially and inherently cruel and unusual, and particularly so in the present case. All in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902, and in violation of the doctrine laid down by the Supreme Court of the United States of America in the case of Paul A. Weems, Plaintiff in Error, versus The United States, Defendant in Error.

XV.

The Supreme Court erred in imposing upon the defendant the penalty of cadena temporal and accessories, towit, the civil interdiction of the defendant during the time of his imprisonment, his perpetual and absolute disqualification and subjection to the surveillance of the authorities during his life, in accordance with section 56 of the Penal Code, all of which said penalties should be served in accordance with the provisions of sections 42 and 43 of the said Code. and further, because the said necessary penalties are essentially and inherently cruel and unusual, and particularly so with relation to the present case. and further, because they are inseparable from the penalty of cadena temporal, which latter penalty cannot be imposed independently of the said accessories. All in violation
268 of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st, 1902, and the doctrine laid down by the Supreme Court of the United States in the case of Paul A. Weems, Plaintiff in Error, versus The United States, Defendant in Error.

XVI.

The Supreme Court erred in overruling defendant's motion, dated July 26, 1910, asking that the judgment of the trial court be annulled and set aside, which practically amounts to sustaining the imposition of the penalty of cadena temporal and accessories, which said penalty and accessories are essentially and inherently cruel and unusual. All this in violation of the Philippines Bill, that is to say, the Act of the United States Congress of July 1st. 1902, and the doctrine laid down by the Supreme Court of the United States in the case of Paul A. Weems, Plaintiff in Error, versus The United States, Defendant in Error.

Manila, P. I., March 23, 1911.

(Signed) JOSE VARELA Y CALDERON.

269 [Stamped:] Supreme Court of the Philippines. Filed Mar. 28, 1911. Clerk's Office. Blanco.

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States.

JUAN PICO, Plaintiff in Error,
versus
THE UNITED STATES OF AMERICA, Defendant in Error.

Writ of Error.

The President of the United States of America to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in the said Supreme Court of the Philippine Islands, before you or some of you, between The United States of America, Plaintiff and Appellee, against Juan Picó, Defendant and Respondent, a manifest error hath happened, to the great damage of the said Juan Picó, as is said and appears by his petition for a writ of error and assignment of errors, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same
270 at Washington, in said Supreme Court, within one hundred and twenty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 28th day of March, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

[Seal Corte Suprema Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court
of the Philippine Islands.

The foregoing writ is allowed, and it is ordered that the same shall operate as a supersedeas and stay of execution upon the giving and executing by the defendant of a bond in due form in the penal sum of P9,000.00, Philippine currency, with two or more sufficient sureties thereon duly approved by any Judge of the Supreme Court of the Philippine Islands, conditioned that said defendant shall prosecute his writ of error to effect, and that he will answer and sur-

render himself in conformity with the judgment of said Supreme Court of the Philippine Islands and in satisfaction thereof should the same be found without error or finally confirmed by said
271 Supreme Court of the United States, and, if modified by said court, to respond thereto as modified, and answer and respond to any judgment rendered by the Supreme Court of the United States in the premises, and pay the costs.

[Seal Corte Suprema Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

272 [Stamped:] Supreme Court of the Philippines. Filed April 5th, 1911. Clerk's Office. Blanco.

In the Supreme Court of the United States.

JUAN PICO, Plaintiff in Error,
versus
THE UNITED STATES OF AMERICA, Defendant in Error.

Citation.

UNITED STATES OF AMERICA,
Philippine Islands, ss:

By the Honorable Cayetano S. Arellano, Chief Justice of the Supreme Court of the Philippine Islands.

To Ignacio Villamor, Esq., Attorney-General for the Philippine Islands, Attorney for the United States of America, and to the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at Washington, in the District of Columbia, within one hundred and twenty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands, wherein Juan Picó is plaintiff in error and The United States of America is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.
273 Given under my hand, at the City of Manila, in the Philippine Islands, above named, this Fifth day of April, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

[Seal Corte Suprema Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of copy of this citation is hereby acknowledged this 7th day of April, 1911.

LUIS P. TORRES,
Assistant to Attorney General for the Philippine Islands, and Attorney for the United States of America.

274 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 5487.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee,
versus
JUAN PICO, Defendant and Appellant.

Bail Bond.

Know all men by these presents, That we, Juan Picó, as principal, and Bernardino Hernandez y Alvarez and Tomás Arguelles y Fernandez, as sureties, are held and firmly bound unto the United States of America in the sum of nine thousand pesos (P9,000.00), Philippine currency, to which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this fifth day of April, in the year of our Lord one thousand nine hundred and eleven.

The condition of this obligation is such that, whereas the above named Juan Picó has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above-entitled
275 cause rendered by the Supreme Court of the Philippine Islands: Now, therefore, if the said Juan Picó shall prosecute said writ of error to effect, and answer and surrender himself in conformity with the judgment heretofore rendered by the Supreme Court of the Philippine Islands in the said cause, should said judgment be affirmed or found without error by the Supreme Court of the United States, and, if modified by said court, to respond thereto as modified, and answer and respond to any judgment rendered by the Supreme Court of the United States in the premises, then, and in that event, this obligation shall be null and void, otherwise to be and remain in full force and effect.

(S'g'd) JUAN PICÓ.
" B. HERNANDEZ.
" TOMÁS ARGUELLES.

THE UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Bernardino Hernandez y Alvarez, with personal cedula letter "F" No. 18225, issued by the Collector of Internal Revenue in this

city on February 16, 1911, and Tomás Arguelles y Fernandez, with personal cedula letter "F" No. 488, issued by the Col-
276 lector of Internal Revenue in this city on January 4, 1911, came before me personally, and being first duly sworn, each for himself deposes and says that he is a resident of the City of Manila, Island of Luzon, Philippine Islands, and worth the sum of Nine Thousand Pesos (P9,000.00), Philippine currency, exclusive of all debts and liabilities, and property exempt from execution.

(S'g'd) B. HERNANDEZ.
" TOMÁS ARGUELLES.

Subscribed and sworn to before me this fifth day of April, A. D. 1911.

[SEAL.] F. DE P. RODOREDA,
Notario Publico.

Hasta el 31 de Diciembre, de 1912.

Approved.

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Filed April 6/11.

BLANCO, *Clerk.*

277 CITY OF MANILA,
Philippine Islands, ss:

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing Two Hundred and Seventy Six typewritten pages contain a true and correct transcript and translation of the record and proceedings had in Case No. 5487 in which The United States is plaintiff and Juan Picó is defendant, as the same appears from the records and files now remaining in my custody and control; and in obedience to the foregoing Writ of Error, I herewith transmit the same to the Supreme Court of the United States this Seventh day of April, 1911.

[Seal Corte Suprema Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 22,726. Philippine Islands Supreme Court. Term No. 650. Juan Pico, plaintiff in error, vs. The United States. Filed June 8, 1911. File No. 22,726.

1

Office Supreme Court, U. S.
FILED.
DEC 16 1912
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 319.

JUAN PICO, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

MOTION TO ADVANCE.

CLEMENT L. BOUVE,
For Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 319.

JUAN PICO, PLAINTIFF IN ERROR,

vs.

UNITED STATES.

MOTION TO ADVANCE.

Comes now Juan Pico, plaintiff in error, and respectfully moves the honorable court to advance this cause upon the docket and hear it at as early a date as the convenience of the court will permit, and for the reasons therefor he states

(1) That on the 5th day of March, 1909, he was indicted in the Court of First Instance of the Province of Isabela, Philippine Islands, for the crime of murder for the killing of a certain Chinaman by the name of Go Siengco; that on the 26th day of March the case was duly tried before the

said court and the plaintiff in error was found guilty of the said crime and sentenced to suffer the penalty of *cadena perpetua* and imprisonment for life; to suffer the accessory penalties of article 54 of the Penal Code of the Philippine Islands, and to indemnify the heirs of the deceased in the sum of one thousand pesos; that on the 21st day of March, 1910, the Supreme Court of the Philippine Islands, on appeal, rendered its decision affirming the decision of the Court of First Instance, but reducing the penalty to seventeen years, four months, and one day of *cadena temporal*, to the accessories provided by law, to indemnify the heirs of the deceased in the sum of one thousand pesos, and to pay the costs of the trial; on the 5th day of April, 1911, a writ of error to the Supreme Court of the United States was filed and allowed, and a stay of execution was granted upon the filing of a bond of nine thousand pesos, Philippine currency, which bond was filed the same day. The plaintiff in error is at present at large on bail.

(2) The plaintiff in error contends that grievous wrong has been committed in the conviction and the affirmance by the Supreme Court of the Philippine Islands in that, among other considerations, that court decided that plaintiff in error was guilty of murder, at the same time finding he had no intent to kill; and that the penalty imposed upon the plaintiff in error has been held by this court to constitute a cruel and unusual punishment prohibited by the constitution of the United States, and the Philippine Bill of Rights.

I am authorized to state that the Government concurs in this motion.

Respectfully submitted,

CLEMENT L. BOUVÉ,
For Plaintiff in Error.

To the Attorney General of the United States:

You are hereby notified that the plaintiff in error in the above-entitled cause will on the 16th day of December, A. D. 1912, on the meeting of the Supreme Court of the United States for that day, or as soon thereafter as counsel may be heard, submit to the consideration of the court the foregoing motion.

Supreme Court, U. S.
FILED.
DEC 21 1912
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 319.

JUAN PICO, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PLAINTIFF IN ERROR.

CLEMENT L. BOUVÉ,
Counsel for Plaintiff in Error.

SUBJECT INDEX.

	Page
STATEMENT OF FACTS	1-13
Circular issued by Provincial Governor authorizing arrest of suspicious characters in Maluno	2
Act of Philippine Commission authorizing circular	2-3
Official report of the death of deceased made by witness Baquiran as chief of police of the barrio	4-5
Official acknowledgment of above report by municipal president	5
Official report of post-mortem examination of the body of deceased	5-6
ASSIGNMENT OF ERRORS	12
Of three "obvious errors unassigned"	12
Of 14th, 15th, and 16th errors	12
ARGUMENT	13-52
In support of first error unassigned	13
Complaint	13-14
Alevosia defined	15
Second error unassigned	18
Killing with alevosia necessarily involves intent to kill	19
Killing with alevosia not necessarily murder because deceased was killed while unable to defend himself	20
Absence of intent to kill found by Supreme Court incompatible with conviction of murder	23
Third error unassigned	25
Testimony of non-expert witnesses for the Government	27-37
As to alleged striking of deceased in the house of Castellanes	27
As to alleged striking of deceased between house of Castellanes and top of hill	28
As to alleged striking of deceased after reaching top of hill	29
As to cause of condition of deceased after reaching top of the hill	32
As to cause of deceased's failure to walk	34
Summary of testimony of Government's witnesses on above points	35

Page

Testimony for expert witnesses for the Government..... 37–45
Testimony of Claravall..... 37
Not qualified as an expert..... 37–38
His original report compared with his testimony..... 39, 40, 41
Testimony of Banta..... 41
Not qualified as an expert..... 41
Conflicting statements in their testimony as to cause of death compared..... 44
General lack of credibility of Government's witnesses..... 45
14th, 15th, and 16th assignments of error.....
Extent of penalty imposed, together with accessories..... 48, 49
Held unconstitutional in case of Weems *vs.* U. S..... 50
Act charged, if committed, constitutes reckless negligence. 51
CONCLUSION..... 53

CASES, STATUTES, AND AUTHORITIES CITED.

A.

Act No. 82 (Phil. Com.) (amended by act 1309)..... 37
Act No. 1309–1 (Phil. Com.)..... 1–2
Act of Congress July 1, 1902 (Philippine Bill of Rights)..... 11

C.

Clayatt *vs.* United States, 197 U. S., 207, 222; 49 Law Ed., 726, 731.. 25
Compilation Acts Philippine Commission, sec. 864..... 37
Compilation Acts Philippine Commission, sec. 866..... 38

D.

Diaz *vs.* United States, 223 U. S., 442; 56 Law Ed., 500..... 25

P.

Penal Code of the Philippine Islands, Art. 9, sub. 3..... 18
Art. 10, par. 2..... 15
Art. 31..... 40
Art. 42..... 48
Art. 43..... 49
Art. 61..... 52
Art. 403..... 14, 15, 48
Par. 3..... 24
Art. 503, par. 1..... 24
Art. 568..... 51
Title 3, chap. 3, sec. 3..... 48
Philippine Bill of Rights, sec. 5..... 48

Page

S.

Salva, Vicente (Spanish-French Dictionary) 15
Sentencia (decision) Supreme Court of Spain, December 16, 1870 .. 24
February 23, 1872... 24
February 5, 1873.... 16
October 11, 1875..... 16
October 8, 1877..... 24
February 19, 1879... 17
April 2, 1884..... 17, 20, 23
May 6, 1884..... 17, 20, 23
November 21, 1884.. 52
November 9, 1885... 16
November 30, 1885.. 52
February 3, 1886.... 24
January 27, 1887 20
March 9, 1887..... 24
May 6, 1887..... 52
May 6, 1887..... 52
June 13, 1887 .... 16, 19, 52
United States *vs.* Balogtas and Jaims, 19 Phil. Rep., 164 21
United States *vs.* Da Silva, 14 Phil. Rep., 413..... 21
United States *vs.* Mercoleta, 17 Phil. Rep., 317 21
United States *vs.* Ricafor, 1 Phil. Rep., 175..... 17
United States *vs* Sabio, 2 Phil. Rep., 485..... 36
Velasquez (English-Spanish Dictionary)..... 15
Viada y Villaseca, Commentaries on the Penal Code, vol. III, p. 65. 23
Viada y Villaseca, Commentaries on the Penal Code, vol. III, p. 85. 25
Weems *vs.* United States, 217 U. S., 349; 54 Law Ed., 793 ..... 13, 50
Wiborg *vs.* United States, 163 U. S., 653; 41 Law Ed., 289, 298.... 25

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 319.

JUAN PICO, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of Facts.

The record in this case shows that some time before the 1st of March, 1909, the municipal president of Ilagan, Province of Isabela, P. I., acting under the instructions of the provincial governor of Ilagan (R., 27) and by authority of section 40 of act 82 (as amended by act 1309-1; section 319 (*m*), Compiled Acts of the Philippine Commission (247)), addressed to one Francisco Baquiran, the chief of police in the barrio of Maluno, in the municipality of

Ilagan (R., 25), duly appointed as such by the municipal president and town council, the following circular (R., 27):

> "In view of a communication received by me from the provincial governor, as well as on account of information received by me to the effect that there are certain bad characters in the various barrios of this municipality, and in conformity with the provisions of section 40 of act 82, and under the authority conferred upon me by the said section, I hereby call upon every male resident of this municipality to assist in the arrest of suspicious characters. And this order is issued so that every male inhabitant of this barrio may know that he is bound to render every assistance in his power to this end and to patrol their respective districts day and night in order that these bad characters may be apprehended, except such residents as may be sick, but all others between eighteen and fifty must comply with this order and take turns in patrolling and policing the districts during the day as well as the night, and all male inhabitants who fail to comply with this order you will report to me, so that the corresponding punishment may be meted out to them. You are hereby held strictly responsible for the carrying out of this order. You are also ordered to report to me the names of all persons occupying a house in your barrio and the names of any strangers or suspicious persons who may be stopping with them. Please acknowledge receipt."

The authority for this circular is found in act 1309-1 of the Philippine Commission (section (*m*), Codification of the Acts of the Philippine Commission, p. 274), which provides:

The municipal council is empowered—

(*m*) With the approval of the provincial governor, when the province or municipality is infested with ladrones or outlaws:

(1.) To authorize the municipal president to require able-bodied male residents of the municipality, between the ages of eighteen and fifty years, to assist, for a period not exceeding five days in any one month, in apprehending la-

drones, robbers, and other law breakers and suspicious characters, and to act as patrols for the protection of the municipality not exceeding one day in each week. The failure, refusal or neglect of any such able-bodied man to render promptly the service thus required shall be punishable by a fine not exceeding one hundred pesos or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court. . . ."

(2.) To require each householder of any municipal center or of any barrio of the municipality to make prompt report to the municipal president or municipal councillor of the barrio, as the case may be, of the name, residence and description of any person not a resident of such municipal center or barrio who may enter the house of such householder or receive shelter or accommodations therein. The report made to the municipal councillor of the barrio shall be transmitted by such councillor within twenty-four hours after its receipt to the municipal president. Any householder failing, neglecting, or refusing to make prompt report as herein prescribed * * * shall be punished by a fine not exceeding one hundred pesos or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court.

The circular thereupon was made public in the hacienda and barrio of Maluno (R., 27).

About midnight of March 1, 1909, the plaintiff in error, Juan Pico, the manager of the hacienda of Maluno, situated in the aforesaid barrio of that name, accompanied by the witness Francisco Baquiran, the lieutenant of the police of the said barrio; one Tebes, one Rustant and two servants, of whom one was the mute, named Jose Balayang, went to the house of one Eugenio Castellanes, situated in the barrio; the plaintiff in error, Tebes, Rustant and Baquiran on horseback (R., 18), the servants on foot.

The purpose of the expedition appears from the report of Baquiran to the municipal president of Ilagan (R., 8), hereinafter set out in this statement, and is further to be found

in the testimony of the witness Baquiran (R., 18). It happened that on that night a man who was going in the direction of the house where the laborers were being paid had been pursued by three unknown individuals. When they arrived at the house this witness states that "the persons who were there ran away and we did not see them" (R., 18), but they there found and arrested a Chinaman by the name of Go Sieng, and took him back to the casa hacienda (ranch building) of Maluno. About four o'clock in the morning of March 2d the Chinaman died and was buried some time after eight o'clock the same day (R., 22). The same day the witness Baquiran made the following report to the municipal president of Ilagan: (R., 8.)

"MALUNO, *March* 2, 1909.

"The Municipal President of Ilagan:

"SIR: The undersigned having been informed that there were some suspicious characters within the hacienda of Maluno, and in view of the fact that some of the tenants of the said hacienda have been paid their share of the tobacco crop, *and in compliance with the strict orders recently received from your office I deemed it necessary to report to Don Juan Pico, the manager of the said hacienda*, the following facts: I proceeded with the said gentleman and employees to make an inspection of the hacienda and met the Chinaman, Go Sieng, between 11 and 12 o'clock of the night of the 1st instant, *within the limits of the said hacienda*, and in order to avoid the possibility of any injury to the said Chinaman we decided to send him to the hacienda building, accompanied by the watchman Simeon Bayad. At 4 o'clock this morning the said Simeon Bayad reported to me that the Chinaman Go Sieng had died without his noticing it; and being ignorant of the cause of the death of the said Chinaman I asked Dr. Teves, who lives on the hacienda, to give me his opinion as to the probable cause of the death of Go Sieng. The said doctor was of the opinion that the Chinaman died of heart failure. I accordingly enclose a detailed list of the various ar-

ticles found upon the body of the deceased as follows: One leather belt, plain; one leather belt, with several pockets, in one of which is a merchant's license and P29.05 in coin, which will be delivered by the messenger, the bearer of this letter Nicomedes Crisotomo. Kindly acknowledge receipt of the articles enumerated in this letter.

"Yours respectfully,

"FRANCISCO BAQUIRAN."

This report was acknowledged by the municipal president in the following form: (R., 9.)

"OFFICE OF THE MUNICIPAL PRESIDENT,
"ILAGAN, ISABELA, P. I., *March* 3, 1909.

"To the Municipal Lieutenant of the Hacienda of Maluno.

"SIR: *I have received your official letter* of the 2d of March, 1909, reporting the death of the Chinaman Go Sieng, as the result of heart disease. I also received a leather belt, plain; another leather belt with pockets, a merchant's license, and P29.05 in silver coin, the property of the said Chinaman.

"Respectfully,

"GABRIEL MARAMAG,
"Municipal President."

On the afternoon of March 5th in compliance with a communication from the justice of the peace of Ilagan (R., 48), one Claravall, president of the board of health of Ilagan, caused the body of the deceased to be exhumed and examined under his direction (R., 48).

On March 6th he made and certified the following report:

"I, Nicasio P. Claravall, president of the municipal board of health of Ilagan, a ministering surgeon and a graduate of the University of Santo Tomas of Manila, do hereby certify: That, by virtue of a communication from the justice of the peace of this capital, requesting that an examination be made of the body of the Chinaman Go Sieng, deceased, who was buried in the cemetery of Maluno, at half-past five on the afternoon of the fifth instant, together

with the justice of the peace, the municipal president, Dr. Cesar Sorramin, Mr. Maximo Teves, and other persons who went with us, I proceeded to disinter the body with all the necessary precautions in the presence of the said gentlemen, and made the necessary examination which resulted as follows:

"The deceased wore a coat, with short sleeves, made of striped cloth, wide trousers such as are generally worn by Chinese, and under the coat a white undershirt, and having been stripped of the said clothing the body presented the following appearance:

"The skin had a special color, with some blood clots described as follows:

"The head was in a normal condition, some of the hair having fallen out; the face with an eye half open, and the tongue protruding about two centimeters out of the mouth; several livid spots on the neck, and blood clots on the right side about three or four centimeters more or less below the right nipple; several livid spots on the left shoulder; some blood clots and livid spots on right shoulder and right forearm; livid spots on the lower abdomen; blood clots on the hips, and the rectum protruding about three or four centimeters more or less.

"Upon opening the thoracic cavity the body presented certain blood clots upon the thoracic walls, as well as upon the pleura on the right side; the lung had a greenish color; the pharynx was in a normal condition; and the heart discolored and in a complete state of vacuity.

"The body was swollen, particularly the abdomen, by reason of the formation of gases. Decomposition of the body had already set in.

"The body presented no other injuries except those already enumerated.

"In witness whereof, and at the request of the justice of the peace of Ilagan, I have signed these presents this 6th day of March, nineteen hundred and nine.

"(Signed) IGNACIO P. CLARAVALL.
"Surgeon, Chairman of the
"Municipal Board of Health." (R., 9, 10.)

On March 11th a complaint was sworn out by the district attorney before the justice of the peace of Ilagan against the lieutenant of police of the barrio, Baquiran, and the mute, José Balayang as coprincipals in the crime of murdering the deceased Chinaman Go Sieng (R., 10, 11, 12). The accused were arrested on the same day. On March 13th the complaint against the two accused was dismissed on motion of the district attorney in order that the defendants "might be used as witnesses for the government in the Court of First Instance" (R., 4, 5, 7).

The circumstances under which the case against the witness Baquiran was dismissed are best told by himself. He was arrested on March 11th, and sent to jail, where he remained until the 13th, when he was released: (R., 30-33.)

"Q. You have said that you were in jail from the 11th to the 13th. Why were you in jail?

"A. *Because I could not think well as to what I had to testify in this case.*

"Q. Do you mean to say that you were put in jail simply because you could not remember what you had to testify in this case?

"A. Yes, sir. Because I told a lie.

"Q. Before whom did you tell that lie?

"A. Before the justice of the peace and the district attorney.

"Q. And were you put in jail because you had told a lie to the judge and district attorney?

"A. Yes, sir.

"Q. Where were you at the time you told that lie to the court and to the district attorney?

"A. In the justice court.

"Q. And how did the justice of the peace and the district attorney learn that you had testified falsely?

"A. Yes, because, when I was asked whether I knew anything about this case I told them that I had seen nothing at all.

"Q. What case do you mean, the case against Juan Pico?

"A. Yes, sir.

"Q. Do you know whether the justice of the peace

and the district attorney took down what you now say was a lie?

"A. I do not remember whether they did or not.

"Q. Do you remember having seen the statement made by you before the judge and district attorney?

"A. Yes, sir. They told me to sign the statement made by me.

"Q. And did you sign it?

"A. Yes, sir.

"Q. Do you know where that testimony is now?

"A. I do not know.

"Q. You have said that you were put in jail because you testified to a falsehood in the case against Mr. Pico. How did they know that you testified falsely?

"A. *Yes, because the owner of the house also testified and my testimony did not jibe with his.*

"Q. And how did they know that your testimony was false and that the statement made by that other person was true. How did the district attorney and the justice of the peace conclude that your testimony was false simply because it did not jibe with the statement made by the owner of the house?

"A. Yes, sir; because when they asked me to state what I knew I told them that I had seen nothing.

"Q. Who is the owner of the house to whom you refer?

"A. Eulogio Castellanes.

"Q. Did he testify at the same time that you did in the case against Mr. Pico?

"A. Yes, sir.

"Q. Do you remember the day?

"A. It was the 11th.

"Q. And after you and Castellanes testified before the district attorney and the justice of the peace you were put in jail, were you not?

"A. Yes, sir.

"Q. You and Castellanes testified here in the justice court in the presence of the district attorney and the justice of the peace, did you not?

"A. Yes, sir.

"Q. You were also charged in the court of the justice of the peace of Ilagan with the murder of a Chinaman by the name of Go Sieng, were you not?

"A. Yes, sir. The district attorney is the one who filed the complaint.

"Q. And that complaint was filed against you on the 11th day of March, was it not?

"A. Yes, sir.

"Q. And you were kept in jail for two days, from the 11th to the 13th?

"A. Yes, sir.

"Q. Do you know what became of the case against you for the murder of Go Sieng; do you know what the judgment of the justice of the peace was in that case against you for the killing of Go Sieng?

"A. No, sir.

"Q. Do you know whether the complaint was dismissed?

"A. Yes, sir.

"Q. Was it dismissed?

"A. Yes, sir.

"Q. Do you know why?

"A. No, sir.

"Q. And how did you come to be discharged from custody?

"A. Because I then realized that the man who tells a lie will eventually be punished by God and justice, whereas, the man who tells the truth will be rewarded both by God and justice.

"Q. When did you think of that?

"A. On the 13th.

"Q. And did you communicate with anybody your conclusion to tell the truth in this case?

"A. The only persons to whom I spoke about it were the district attorney and the justice of the peace.

"Q. And what did they say to you?

"A. They said: 'We do not compel you to say anything here at all. If you voluntarily want to tell the truth you can do so, but we will not compel you to do it.'

"Q. And at that time you signed the statement made by you in the court of the justice of the peace?

"A. Yes, sir.

"Q. The fact that you concluded to tell the truth to the district attorney and the justice of the peace,

was that the only reason why the case against you was dismissed?

"A. Yes, sir.

"Q. And did you believe at that time that if you told the truth you would thereby gain something, and also obtain your liberty?

"A. That was my belief, because I also thought that the man who tells the truth is loved both by justice and God.

"Q. Do you still have that belief?

"A. Yes, sir.

"Q. In this case too?

"A. Yes, sir.

"Q. And with reference to the case against you which was dismissed?

"A. Yes, sir.

"Q. Now then, is it not a fact that the case against you was dismissed because you promised and agreed to appear in this Court of First Instance and testify as a witness for the government in the case against Mr. Pico.

"A. Yes, sir."

On March 16, a complaint was filed by the district attorney before the clerk of the Court of First Instance accusing the plaintiff in error of murder, in that, after ordering the deceased Chinaman to be bound and rendered helpless, the accused with the intention of killing him, struck him several blows with a gun-butt, from which deceased subsequently died (R., 1, 2). The plaintiff in error having been arraigned, and having pleaded not guilty his trial was set for March 26. The main witnesses for the government were the lieutenant of the barrio, Baquiran, and the mute, Jose Balayang, the latter's testimony being given by means of signs interpreted by his mother, Maria del Pilar (R., 46-47). The government's theory of the guilt of the plaintiff in error was, briefly, that he caused the hands of the Chinaman to be tied behind his back on leaving the house of Castellanes, where he was apprehended, and on the way from that house to the farm-house or ranch-house where

the plaintiff in error lived, struck the Chinaman with his gun-butt with the intention of killing him, and that the deceased's death was the result of the blows inflicted upon him by the plaintiff in error. Two witnesses of the government testified that the plaintiff in error struck the Chinaman with his gun-butt while in the house of Castellanes, one witness that he struck the deceased while on their way from the house of Castellanes to the top of the hill or incline, on which was situated the casa hacienda, and two that he struck him just outside of the farm-house. In addition the government produced two witnesses who were present when the body was exhumed, and who testified that the death of deceased was due to blows inflicted upon him with a blunt instrument. The Court of First Instance of Ilagan found him guilty, and sentenced him to life imprisonment on April 3 (R., 107-8-9-10). Plaintiff in error appealed. On August 12, he filed a motion for a new trial in the Supreme Court of the Philippine Islands on the ground of newly-discovered evidence (R., 110). On March 21, 1910, the Supreme Court of the Philippines denied the motion and rendered its decision, holding the accused guilty of assassination (murder in the first degree), and modified the sentence imposed below; sentencing the defendant to imprisonment for seventeen years, four months, and one day, and the accessories provided by law (R., 114). This modification was based on the Supreme Court's finding that the plaintiff in error had no intention "of committing so grave an injury as that which he inflicted" (R., 116). Whereupon the plaintiff in error sued out his writ of error to this court.

Of the 16 errors set out in the assignment of errors in the record (R., 127-131), the first 13 are stated by the plaintiff in error to constitute a denial of due process of law and of the equal protection of the laws guaranteed by the Philippine Bill of Rights (act of Congress, July 1, 1902), by holding that the evidence given in the trial court was sufficient to justify a conviction, by refusing to pass upon the credibil-

ity of the witnesses for the defense in the court below, by convicting the accused without finding that deceased died as the necessary result of the blows found to have been inflicted on him by the accused, and by refusing to grant the plaintiff in error a new trial on the affidavits urged in support of the motion (R., 111-114). The last three assignments are based on the ground that the imposition of *cadena temporal* with its accessories constitutes the infliction of a cruel and unusual punishment prohibited by the Constitution of the United States and the Philippines Bill. There are, however, other errors not brought to the attention of the Supreme Court of the Philippine Islands, and not included in the assignment of errors which, it is respectfully submitted, are so apparent on the face of the record, and of such importance as to merit the consideration of this court under rule 35.

These we beg to submit and argue as follows:

1. That the Supreme Court of the Philippines erred in convicting the accused of murder, since the complaint is so formed that it will not support a sentence of murder under the law in force in the Philippine Islands.

2. That the Supreme Court of the Philippine Islands erred in convicting the plaintiff in error of murder, since it found as a matter of fact that he did not intend to kill the deceased.

3. That the Supreme Court of the Philippine Islands erred in convicting the plaintiff in error of murder, in that there is no evidence as a matter of law that the deceased died as the result of blows inflicted upon him by the plaintiff in error.

As to the 14th, 15th and 16th errors assigned in the record (R., 131) we shall argue that the Supreme Court erred in imposing on the plaintiff in error the punishment of *cadena temporal* and its accessories, defined and prescribed by the Penal Code of the Philippines, on the ground that the penalty inflicted is a cruel and unusual punishment, prohibited

alike by the Constitution of the United States and the Philippine Bill of Rights.

Although questions respecting the denial of rights which find expression and sanction in the Federal Constitution and the Philippine Bill of Rights are not raised below, they may be considered by the Federal Supreme Court on error to the Supreme Court of the Philippine Islands in the exercise of its discretion, under Supreme Court Rule 35, to notice a plain error not assigned (Weems *vs.* United States, 217 U. S., 349; 54 Law Ed., 793).

ARGUMENT.

I.

THE SUPREME COURT OF THE PHILIPPINES ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER SINCE THE COMPLAINT IS SO FORMED THAT IT WILL NOT SUPPORT A SENTENCE FOR MURDER UNDER THE SPANISH LAW.

The complaint reads as follows:

"*Complaint.*

"No. 396.

"THE UNITED STATES
vs.
"JUAN PICO.

"For Murder.

"In the Court of First Instance of the Province of Isabela, First Judicial District, this 15th Day of March, 1909.

"The undersigned accuses Juan Picó of the crime of murder, with the qualifying circumstances of *alevosia* (treachery), as defined and penalized in section 403 of the Penal Code, committed as follows:

"1st. That the said Juan Picó on or about the evening of the 1st day of March, 1909, at a place known as 'The Hacienda of Maluñó,' within the municipality of Ilagan, Province of Isabela, P. I., voluntarily, unlawfully and feloniously ordered one Francisco Baquiran to sieze a Chinaman by the name of Go Siengco, and instructed his two servants, named José Balayang and Hermogenes Ramos, to tie the said Chinaman, which said orders and instructions from the accused were by them immediately complied with.

"2nd. That the said Chinaman, Go Siengco, was tied by the neck and by the arms behind his back, pursuant to the said orders from the said accused Juan Picó, thus rendering it impossible for the Chinaman to defend himself, and the said accused, Juan Picó, at the said time and place, with the intention of killing the said Chinaman, Go Siengco, struck him several blows with a shotgun, as a result of which said blows the said Chinaman, Go Siengco, subsequently died; all in violation of the statute in such cases made and provided.

"(Signed) V. NEPOMUCENO,
"District Attorney.

"Subscribed and sworn to before me this 15th day of March, 1909.

"(Signed) FRANCISCO TAGAD,
"Clerk of Court."

Article 403 of the penal code in force in the Philippine Islands provides as follows:

"The crime of murder is committed by any person who, not falling within the terms of the next preceding article (Art. 402, defining parricide), shall kill another under any of the following circumstances: (1) with *alevosia;* (2) for price or promise of reward; (3) by means of inundation, fire or poison; (4) with evident premeditation; (5) with cruelty by deliberately and inhumanly increasing the sufferings of the offended party."

In Vicente Salva's Dictionaire Español-Francés, Francais-Espagnol "alevosia" is translated *perfidie, trahison, assassinat, machination secrète.* Velasquez (Spanish-English dictionary) gives the term the meaning of "perfidy," "breach of trust."

What "killing a person with *alevosia*" means is explained by par. 2 of article 10 of the penal code. "There is treachery (*alevosia*) when the offender commits any of the crimes against the person employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from any defense which the offended party might make." (Manila, Bureau of Printing, 1911, p. 8.)

It will be noted that the definition of the term *alevosia* is given in the penal code in connection with the enumeration in article 10 of circumstances which aggravate criminal liability. Under the penal code in force in the Philippines the penalties provided for criminal acts are divisible into three degrees. In the absence of a circumstance enumerated in the code as aggravating or mitigating criminal liability the penalty for the commission of a crime once proven will be imposed in its medium degree; if a mitigating circumstance marks the commission of the offense, in its minimum degree; if an aggravating circumstance, in its maximum degree; under these conditions the circumstance of treachery is known in the Spanish law as a generic circumstance. An exception is made, however, in the crime of "homicide," that is, the crime of unlawfully killing a person, in that when the killing is committed with treachery the circumstance of treachery is no longer a *generic* circumstance of the crime of "homicide," but is known as a *qualifying* circumstance which, as provided in article 403, raises the crime of homicide to the crime of assassination, which corresponds to our crime of murder in the first degree.

The complaint charges the accused with the crime of having treacherously murdered the deceased in that (1) he feloniously ordered him to be tied and thus rendered de-

fenceless, and (2) that while deceased was in this defenceless condition the accused, with the intention of killing him, struck him the blows which caused his death. At this point it may be well to emphasize the fact that under the Spanish law the concurrence of killing with intent to kill does not make the killing murder. The crime of "homicide" is defined by the penal code in article 404 as follows: "Any person who, not falling within the provisions of article 402 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article shall be guilty of homicide." "It is a condition essential to existence of the crime of homicide that the material thing which results in death find its impulse in an unfettered intention, expressed by an act sufficient to cause death or some physical injury which produces death as its natural consequences." (Sent. Nov. 9, 1885, Viada Penal Code III, p. 647); the court referring in the same case (where the accused was charged with homicide) to the absence of malicious intent, "in which case alone would the crime be murder or homicide." (Sent. June 13, 1887, Viada *ibid.*, 649; and see Sent. Feb. 5, 1873, *ibid.*, 645; Sent. Oct. 11, 1875, *ibid.*, 645.) To support a verdict of murder with treachery under the circumstances of this case it is essential that the complaint should have alleged that the purpose of the tying of the deceased was to make it impossible for the deceased to defend himself from the attack at that time contemplated by the accused, that the blows struck with an intent to kill were inflicted in carrying out a preconceived plan, the first steps of which were manifested by the tying, or that the blows were struck by the accused with the intent to kill *because* the deceased was in a helpless condition and *because* the killing could be accomplished without any risk to the accused from the defense which the deceased might make. The complaint falls short of sustaining the sentence of murder in that it simply alleges the fact that the accused ordered the deceased to be tied and that while tied and defenseless he intentionally killed him. In other words, the complaint

fails to allege that the tying was the means employed by the accused for the execution of the crime. The complaint contains no allegation of such treacherous intent as is necessary to constitute the charge of murder with *alevosia*.

The above contention is fully supported by decisions of the Supreme Court of Spain and of the Philippine Islands. The mere fact that a person is killed—even intentionally—by another when he is defenseless (as when he is attacked from behind or when he is held so that he cannot move) does not *ipso facto* constitute murder with treachery. There must be a conscious taking advantage of the deceased's defenseless condition (Sent., 2 April, 1884; Sent., 6 May, 1884; Viada Codigo Penal, vol. III, pp. 24-25; Sent., Feb. 19, 1879; Viada *ibid.*, p. 28). The fact of binding must have "for its direct and special object the execution of the crime" (United States *vs.* Ricafor, 1 Phil. Rep., 175).

The Court of First Instance found that the plaintiff in error had ordered the deceased to be tied; that while tied he inflicted upon him blows with his gun butt from which the deceased died (R., 107, 110), and found him guilty of murder with treachery. The Supreme Court affirmed the judgment below, having "only one criticism" to make on it (R., 116)—that the accused did not intend to kill—and found the accused guilty of assassination with treachery (murder in the first degree) (R., 119).

Although the complaint charges the accused with the crime of murder with treachery, it fails to allege facts which constitute treachery under the penal code in force in the Philippine Islands; and in the allegation of facts which purport to constitute the crime of murder the complaint charges simple homicide, and no more. Consequently it will not sustain the sentence of murder imposed either by the Court of First Instance or by the Supreme Court of the Philippine Islands.

II.

THE SUPREME COURT OF THE PHILIPPINE ISLANDS ERRED IN CONVICTING THE PLAINTIFF IN ERROR OF MURDER WITH TREACHERY, FINDING AS IT DID AS A MATTER OF FACT THAT THE PLAINTIFF IN ERROR DID NOT INTEND TO KILL THE DECEASED.

The Supreme Court of the Philippine Islands made no specific finding of fact in this case; it is said in the judgment of conviction that the evidence adduced on the trial supports the findings of the trial court (R., 116). Stated briefly, the findings of the trial court are that the accused struck deceased several times with his gun (R., 108); that as a result of the blows inflicted upon him by the accused the deceased arrived at a state of collapse (R., 108); that about four hours after reaching this condition the deceased died (R., 108); that nearly four days after his death, and on post-mortem examination, the body showed plainly the marks of the violent treatment to which the deceased man had been subjected at the hands of the accused (R., 108), and finally that the accused was guilty of the crime of murdering the deceased (R., 110).

It is stated in the sentence rendered by the Supreme Court: "We have only one criticism of the judgment below. We are convinced that the court, in imposing the penalty, should have taken into consideration the effect of the extenuating circumstance described in article 9, subdivision 3, of the Penal Code, 'that the delinquent had no intention of committing so grave an injury as that which he inflicted.' There not having been present any aggravating circumstance, the penalty should have been imposed in its minimum degree."

The Supreme Court thereupon modified the sentence imposed below to the sentence of seventeen years four months and one day of *cadena temporal*, to the accessory penalties provided by law, to indemnify the heirs of the deceased in the sum of one thousand pesos (P1,000), and to pay the costs of the trial. So modified the judgment was affirmed (R.,

116). This then constitutes a sentence to the effect that the plaintiff in error killed the deceased with treacherous intent and yet had no intent to kill.

It is impossible to read the code definition of *alevosia* and to reach the conclusion that a killing which results from the employment of means, methods, or forms which tend directly and specially to insure the killing without risk to the offender arising from the defense which the offended party might make is an unintentional act.

The intent to kill is, under the Spanish law as it is in our own, of the very essence of the crime of murder (Sent., June 13, 1887; Viada Codigo Penal, vol. III, 647), the difference being that in order to constitute murder the acts which accompanied the intent must—for the purposes of a case like the present—be of a treacherous nature. It is doubtless due to the fact that the term *alevosia* (treachery) as used in the code as a qualifying circumstance of homicide (*i e.*, raising it to murder) necessarily involves an intent to kill that the precise question has apparently received so little attention directly in the adjudications of the Supreme Court of Spain. In the rare cases in which the question has come up, however, that tribunal has left little to be said upon the subject:

> "In view of the fact that the offense was the result of a dispute, and of threats with a deadly weapon made by C. against M. the assault with a club made by the latter immediately upon being disarmed by J. S., although made from behind, the nature of the implement used for the purposes of the assault, and the surrounding circumstances which might well have forewarned M. that the assault would be persisted in and to protect himself against it, did not show that the accused *specially intended to kill* without risk to himself from any defense made by his adversary—from which *alevosia* takes its origin in law, and not from the mere fact, at times accidental, as it was in the present occasion, that the wound was inflicted from behind—a fact which here appears as

> proven by the circumstances which mark the development of the event—and *not because the accused consciously took advantage of such conditions*" (Sent., April 2, 1884; Gazette, Sept. 18; Viada y Villaseca, Codigo Penal, vol. III, p. 24).

And in a later case (Sent., May 6, 1884; Gazette, October 4; Viada *ibid.*, p. 25) the same court held that where during an affray the accused killed the deceased while he was being held by another, and powerless to protect himself from the attack, the crime was that of simple homicide and not murder, saying:

> "Although they committed the offense by taking the advantage which at a certain moment in the quarrel was offered by their relative superiority, it is not shown with the clearness which the law demands (unless we refuse to give weight to matters incidental to the deed, by which the character of the crime in the present case is to be determined) that they made use of the methods of execution which they employed with the special and direct intention of guaranteeing the outcome to be without any risk arising from an *adversary already forewarned.*"

The above cases clearly show that the mere fact that a person is killed under circumstances where he is unable to defend himself, or offer any defense does not *per se* constitute the crime of murder.

That the intent to kill is a necessary element of murder with *alevosia* is shown by the following extract from a decision of the Supreme Court of Spain of the 27th of January, 1887, Gazette, August 1; Viada *ibid*, vol. III., p. 24. In this case the accused was concealed from the view of the person attacked, and unexpectedly and at a distance of a few paces shot at him with a shotgun, some of the shot of which struck him, but did not kill him. The court held that this was frustrated murder, "because *the intent to kill* which can only be shown by external acts was clearly proven by the *weapon* which he employed to perform the act; by the

large number of projectiles with which it was loaded; by the short distance which separated the accused and the party assaulted," etc.

The Supreme Court of the Philippine Islands has had occasion to pass upon this point once at least directly and more or less indirectly at other times.

> "The evidence shows beyond peradventure of doubt that the defendant had *lain in hiding*, waiting for arrival of the deceased, with a heavy club in his hand *for the purpose* of inflicting the blows which he actually did inflict. He must have intended by reason of the means which he employed, to have committed the act which he actually did commit. * * * Finding then, as we do, that the crime was committed with *alevosia*, which was sufficient to qualify the crime as assassination * * * the penalty to be imposed," etc. (United States *vs.* Dasilva, 14 Phil. Rep., 413).
>
> "We think the testimony fully establishes the fact that the accused, feeling himself agrieved by having been, as he thought, defrauded out of a part of the value of his hemp by the deceased, and having learned that the deceased was going to pass alone along the beach that day, *secured the bolo, secreted himself, and awaited the coming of the Chinaman*, and that immediately after the Chinaman passed him, he sprang out and dealt the blow from behind the Chinaman. The deceased evidently did not know that the accused was in that vicinity, *and had no opportunity to defend himself*. In killing this Chinaman, the accused *employed means which directly secured the death of the deceased without any risk on his part*. These facts clearly establish the qualifying circumstance of *alevosia*, which raises the crime to murder" (U. S. *vs.* Mercoleta, 17 Phil. Rep., 317).

The last two cases cited clearly show that the criminal purpose and intent to kill is an essential element of treachery; but it was left for the Supreme Court of the Philippines, in the case of U. S. *vs.* Balagtas and Jaime, 19 Phil. Rep., 164,

to pass directly on whether or not the intent to kill is essential to the existence of treachery. The crime charged in this case was murder committed with treachery and premeditation. The court denied the existence of both these elements in the following words:

> "If there were present in the commission of this crime either one of the qualifying circumstances—*alevosia* or known premeditation—the crime would be that of murder. There is not the slightest proof in the record to show that the defendant had, prior to the moment of the killing, resolved to commit this crime, nor is there any proof that the death of Flores was the result of meditation, calculation or reflection."

The resolution, the intent to kill was lacking; therefore the accused could not be found guilty of a treacherous killing. The absence of meditation, calculation or reflection made it impossible, as a matter of law, to find that the killing had been the result of known premeditation, which like the qualifying circumstance of *alevosia* raises the crime of simple homicide to murder. The Head Note to the case is as follows:

> "When the record contains no evidence showing that the accused had, prior to the moment of the killing resolved to commit the crime, or any proof that the death of the victim was the result of meditation, calculation or reflection, the alleged qualifying circumstance of *alevosia* cannot be considered."

The Supreme Court of the Philippines apparently took it for granted that although the accused did not intend to kill, the mere fact that the deceased's hands were tied at the time that he was struck the blows which the court found caused his death made the killing a treacherous one. That the defenceless situation of the victim, coupled with the intent to kill, does not make the killing murder is shown by the two decisions of the Supreme Court of Spain of April

2, 1884, and May 6, 1884, cited in Viada vol. III., p. 24 (*ante* fol. 17).

If the contention is correct that the Supreme Court erred in convicting the accused of murder with treacherous intent, based on their finding of fact that he had no intention whatsoever to kill the deceased, it necessarily follows that it was error for that court to consider the fact found by them that the plaintiff in error did not intend to commit an injury of so grave a nature as those inflicted, as a mitigating circumstance resulting only in the imposition of the penalty for murder in its minimum degree. It is true that the penal code cites as a circumstance which mitigates criminal liability, the fact that the offender had no intention to commit so grave a wrong as that committed. But it stands to reason that where, as in the crime of murder, the intent of the offender to kill is an essential element of the crime, the absence of such intent can have no other effect, if proven, than to show that the crime charged was not committed. Consequently it is erroneous to speak of the absence of an intent to kill as constituting no more than a generic circumstance of the crime of murder, the effect of which was to mitigate the sentence imposed for that crime. That this is the opinion of the Supreme Court of Spain on this subject is shown by the cases cited in Viada's Commentaries on the penal code, in which he cites numerous decisions to that effect. On page 65 of Vol. III the learned commentator puts the following question: "In any case where the crime of abortion has been committed, should the mitigating circumstances of the offender having no intention to cause so grave an injury as was produced thereby be taken into consideration?" He answers it in these words: "We are of the opinion that this circumstance cannot be lawfully taken into consideration in a case of abortion, because it does not constitute an accidental feature (accidente) of the act, *but is of its very essence, so much so that if it did not exist the act would not constitute the specific crime of abortion penalized by article* 426 *of the code.*"

In a decision of the Supreme Court of Spain cited by Viada (Codigo Penal, Vol. I, p. 210), a person charged with a misappropriation of public funds attempted to set up the defense that he had not intended to commit the harm which he had wrought; but the Supreme Court held that in crimes, the limit or extent of which *depends exclusively on the intention of him* who commits them (as is the case in the crime of misappropriation of public funds now under discussion), the fact *of the extent of the intent to* cause an injury greater or less than that actually accomplished is of absolutely no importance, as this Supreme Court has declared time and again (Sent. Feb. 3, 1886). Article 503, par. 1, of the penal code defines and visits with the same penalties as in the case of murder the combined crime of robbery and homicide; and the Supreme Court of Spain has held (Sent. Dec. 16, 1870, and Feb. 23, 1872), that there was no room for the appeal of the absence of intent to commit injuries so severe as those inflicted, as a mitigating circumstance. These mitigating circumstances cannot be taken into consideration in sentencing the accused for the crime of slander (injurias). Says the Supreme Court of Spain:

> "In view of the fact that circumstance three of article 9 of the code is *opposed to the very nature of slander*, the audiencia erred in giving it weight in this sentence (Sent. Mar. 9, 1887, Viada, Vol. I, p. 211), or in connection with the crime of reckless imprudence because the absence of intention to cause the injury which has resulted *is an actual element of reckless imprudence* and therefore cannot be considered as a mitigating circumstance" (Sent. Oct. 8, 1877, Viada, Vol. I, p. 205).

To close the argument on this point and for the purpose of showing how essential to murder under the Spanish law in force in the Philippines is the criminal intent to kill, attention may be called to par. 3 of article 403 of the penal code, which provides that "one who shall kill another by means of poison shall be deemed guilty of murder in con-

nection with article 432." The last-named article penalizes the act of knowingly administering dangerous drugs to another without an intent to kill and causing an injury thereby. Viada in Vol. III, p. 85 of his Codigo Penal, makes the following comments at this point:

> "But it is to be clearly understood that it is a condition indispensable to the existence of the crime here described (article 432) that the act be committed *without the intent to kill* on the one hand, and with the knowledge on the other hand that the substance or draught administered is injurious to health. *If the intent, if the purpose of the agent* is to cause the death of the person to whom he administers the injurious substance or draught, the offense committed would not be this one (provided in article 432), but the crime of frustrated *murder by means of poisoning,* punishable as provided by No. 3 of article 418." (Article 403 of the Philippine Code.)

III.

THE SUPREME COURT ERRED IN AFFIRMING THE FINDING OF THE COURT BELOW THAT THE PLAINTIFF IN ERROR KILLED THE DECEASED IN THAT THERE IS NO EVIDENCE AS A MATTER OF LAW THAT DECEASED DIED AS THE RESULT OF BLOWS INFLICTED BY THE PLAINTIFF IN ERROR AS ALLEGED IN THE COMPLAINT.

Although the findings of fact of the Supreme Court of the Philippines and the Court of First Instance are in a sense concurrent and thus entitled to great respect, this court will, under the rule laid down in the Wiborg case (163 U. S., 652; 41 Law Ed., 289, 298) and followed in the Clyatt case (197 U. S., 207, 222; 49 Law Ed., 726, 731), examine the record for the purpose of determining whether or not there is any evidence to sustain the conviction (Diaz *vs.* United States, 223 U. S., 442; 56 Law Ed., —), even where the question was not properly raised (Wiborg *vs.* U. S., *supra*) and is presented as a plain error unassigned.

Beyond finding that the plaintiff in error did not intend to kill the deceased the Supreme Court's decision contains no specific finding of fact; as before pointed out (folio 18), it contains but a general affirmance of the decision of the trial court.

The trial court made no specific findings of fact to the effect that the deceased died as the result of the blows inflicted on him by the plaintiff in error. The judge of the Court of First Instance finds "that on arriving at the house of the accused the deceased was in a state of collapse and could not speak as the result of the blows inflicted upon him by the accused (R., 108); that the deceased died some four hours later" (R., 108), but assigns no cause whatsoever for the death; that "on post-mortem examination the body showed plainly the marks of the violent treatment to which the deceased man had been subjected at the hands of the accused on the night in question;" but there is no finding that the deceased's death was the result of such violent treatment (R., 108). The court, however, finds him guilty of the "crime charged in the complaint," to wit, the felonious tying of the deceased, and the infliction of blows upon the person of the deceased with intent to kill, which caused the death of the deceased. With this result the Supreme Court agrees except as to the intent to kill.

Granting that the plaintiff in error struck the deceased with his gun butt there is no evidence as a matter of law to show that deceased died as a result of the blows inflicted. In examining this question it is proposed to analyze the testimony furnished by those who claim to be eye-witnesses of the blows apart from the testimony of the so-called "experts" for the government, under whose direction the body of the deceased was exhumed and examined.

As to Testimony Other Than Expert.

The period of time within which, according to the testimony of the government's witnesses, the blows were struck, extends—if we include the statements of all those witnesses on that point—from shortly after the moment when the plaintiff in error entered the house of Castellanes until the deceased arrived at or near the casa hacienda. For the purposes of analysis this period may be subdivided into three: first, that covering the time the plaintiff in error was in the house of Castellanes; second, that covering the time running from the moment the plaintiff in error left the house of Castellanes until he reached the top of the hill near the casa hacienda; third, the time which elapsed between the arrival of the party at the top of the hill until they entered the casa hacienda.

First. As to the alleged hitting of the deceased in the house of the Castellanes:

Castellanes testifying for the Government, states that the accused on reaching the house went to the place where the Chinaman was and tried to wake him up, but as the deceased did not wake up, accused struck him with the butt end of his gun (R., 14). The witness proceeds to state that the accused was about to strike another blow with his gun, but deceased caught hold of it and both struggled for it until separated by Baquiran (R., 15). The witness Baquiran states the same details, adding that the accused called the deceased three times and, as he didn't move, struck him (R., 18). From the evidence of the government on this point it is perfectly clear that the purpose of the accused in applying his gun-butt was to wake him up, not to do him any bodily harm, and that this mode was resorted to only when the sleeper had been called by the plaintiff in error three times in vain to awake (R., 18). There is nothing to show with what part of the sleeper's

person the gun came into contact; the record is silent as to whether such contact was gentle or sharp; and it is to be presumed in the absence of any such testimony that the contact between the shotgun and the person of the sleeper was of no greater force than would be necessary to accomplish what the government's evidence shows to be the plain purpose of the accused's action, to wit, the awakening of the deceased.

Second. As to the blows alleged to have been struck by the accused after leaving the house of the Castellanes, and before reaching the top of the hill:

Baquiran testifies that upon leaving the house of Castellanes the deceased refused to walk, and *because* he so refused the accused struck him with the butt of his gun (R., 19); that when the party was on the road the Chinaman again refused to walk and was reproached by the accused; that when they reached a hill on the road the deceased stopped again, whereupon the accused struck him with his gun (R., 19).

The mute, Balayang, who, assisted by one Ramos, another servant of the plaintiff in error, had physical charge of the deceased on the way from Castellanes' house to the casa hacienda (the only other government witness who accompanied the deceased from the house of Castellanes to the top of the hill), fails to corroborate in any way the statement of the witness Baquiran to the effect that the accused struck deceased between that house and the top of the hill. This man's testimony, given by signs, and transmitted to the Court of First Instance through the medium of the witness's mother and at least one interpreter (R., 45, 46), is incoherent and hard to follow in the extreme. Interpreted as connectedly as possible, and in the light most favorable to the government's claim, it is to the effect that the deceased, *when lying* near the main steps of accused's house, *to which he had walked up, tied around the neck and shoulders*, was struck by the plaintiff in error (R., 46). He says

not a word of what befell on the journey from the house of Castellanes to the top of the hill. There is nothing in Baquiran's testimony which goes even so far as to imply that on the trip from Castellanes' house to the hilltop the deceased was struck when lying down. His testimony as to the nature of the blow or as to where it fell is no less vague than his statements as to the blows alleged to have been struck in Castellanes' house. Evidence as to the purpose with which the blows were struck, if struck at all, must, in considering what occurred at this juncture, as in considering what occurred in the house of Castellanes, be the only guide in determining whether they were severe or otherwise: here their purpose was to make the deceased advance on his refusal to walk, as there their only end was to awaken him from sleep.

Third. As to the blows alleged to have been struck after reaching the top of the hill and before entering the house of the plaintiff in error:

There are five witnesses who testify as to what is supposed to have occurred during this last period: Anacleta Magás, the wife of the mute Balayang; Balayang, Anacleto Duarte, Bienvenido Duarte, and Baquiran.

The witness Anacleta Magás states that accused struck deceased *while he was lying down* on or near the steps of the house of the plaintiff in error (R., 42, 44). Her husband, the mute, states that deceased was *lying down* when struck by the plaintiff in error, that at first he walked up to the main stairs of the house, and that "when he was struck with the gun he was taken into the house, and once there he lay down" (R.,46). Government's witness Anacleto Duarte, one of the four men who carried the deceased into the house of the plaintiff in error (R., 39), and who was actually carrying the deceased when the witness Magás came down from casa hacienda to see what the noise was about (R., 44), testified that although he saw the accused with the shot-

gun in his possession, he did not see him do anything with it. Government's witness Bienvenido Duarte, another of the four men who carried the deceased from the top of the hill into the casa hacienda (R., 36), testifies that he saw the plaintiff in error there at that time with the shotgun in his hands (R., 36), testifies to the striking of no blow of any kind by the plaintiff in error, and was unable to give any reason why the deceased needed to be carried to the house by four men, although he was given on direct (R., 36), and cross-examination (R., 37) every opportunity to explain that this was due to an assault committed by the plaintiff in error, had he seen any. Finally government's witness Baquiran's testimony gives no indication that deceased was struck after he was carried from the top of the hill to the casa hacienda.

The sum of the government's testimony as to the striking of the deceased by the plaintiff in error, after the hill top was reached is this: Two of the government's witnesses, husband and wife, testified that Picó struck the deceased with his gun-butt on the arrival of the deceased at his house, but before being taken into the house. Of the two of the government's witnesses who actually carried the deceased from the top of the hill up to and into the house; both testified that Picó was there with the shotgun in his possession at that time and on that occasion; one of them, Anacleto Duarte, testifies directly that he did not see the accused do anything with the shotgun and the testimony of the other, Bienvenido Duarte, plainly shows that although he noticed the plaintiff in error with his shotgun there at that time, he did not see him strike the deceased with it. Finally, the main witness for the government, Baquiran, does not state or imply in any part of his testimony that Picó struck the deceased after the top of the hill was reached. In fact his testimony shows plainly that whatever blows he saw struck were struck when the deceased's hands were tied, and that when the deceased was picked up by the four men on the top of the hill

his hands were no longer tied (R., 34). It is plain then that he saw no blows struck after the top of the hill was reached, although he testifies that he was with Picó all the time (R., 104). As a further contradictory feature in the government's testimony as to what happened after the top of the hill was reached, attention may be called to the fact that the mute testifies that when deceased was struck he was tied by his hands and neck (R., 46). His wife, on the contrary, "did not notice" whether the deceased was tied when he was struck, and the witness Baquiran states positively that deceased was no longer tied even before he got to the house of the plaintiff in error (R., 34).

Conceding that in spite of this vital discrepancy by the government's witnesses as to the striking of the deceased by the plaintiff in error at or near the steps of the casa hacienda, the statements of the mute and his wife still have some evidential force and effect, there is absolutely nothing to show that the blow which they testify was struck the deceased, in any way contributed to his death. There is not a word of testimony given by either of these two witnesses as to why the blow was struck; or as to whether the gun-butt of the plaintiff in error came into contact with the person of the deceased with violence or the reverse. The wife alone testifies that the blow was struck on the deceased's *left* side, but it is plain that it could have been of no force whatsoever, for two reasons, which stand out in the record: First, that the deceased made no exclamation at the impact, although the testimony of the other witnesses for the government show that he was not bereft of the power of speech (R., 65, 66); that the blow, if given, although with an instrument as heavy as a shotgun, left no mark of the place of its infliction on the body of the deceased. This is conclusively proven by the original report sent by the government's witness Claravall, after his examination of the body of the deceased (R., 10), as well as by his testimony given at the trial (R., 49, 50), and the testimony of the govern-

ment's witness Banta (59, 60), given at the trial which, while they contain the statements of marks on other portions of the body which they described as bruises, the infliction of which was the direct cause of deceased's death, make no mention whatever of the existence of any bruise or mark of any kind on the *left* side of deceased's body, where, according to the witness Magás, the gun-butt fell. Moreover, conceding that the blow in question was inflicted upon the deceased by the plaintiff in error, both the witnesses who assert this fact state positively that deceased was lying down when the blow was inflicted; and the three other witnesses of the government who testified to the condition of the deceased at the time that Bienvenido Duarte and Anacleto Duarte were summoned to carry him to the casa hacienda from the top of the hill, make it perfectly clear that that condition described by the judge of the Court of First Instance a state of collapse existed *before* the infliction of the blow which, according to the mute and his wife, was struck the deceased by the plaintiff in error on or near the steps of the accused's house.

The sole question left to be determined is whether or not there is any evidence to show that the state of collapse from which, as appears from the decision of the Court of First Instance, affirmed by the Supreme Court, the deceased never recovered, was due to the blows which the witness Baquiran alleges were inflicted upon the deceased by the plaintiff in error from the time that the party left the house of Castellanes until it reached the top of the hill. The only evidence (apart from the direct evidence given by Baquiran to the effect that Picó twice struck the deceased during the transit) incidental to the transfer of the deceased from the house of Castellanes, where he was arrested, to the top of the hill is to be found in the main from statements of the witnesses for the defense. No effort was made by the government to impeach or contradict this testimony, which is merely descriptive of the order in which the plaintiff in error, his servants,

Baquiran, and two government witnesses took the road for the accused's house. The distance from the house of Castellanes to the hacienda building was shown to be about 1,000 meters by a trail more or less straight, about one meter in width. The mute, Balayang, and one Ramos took physical charge of the deceased and proceeded about 70 or 75 yards ahead of the plaintiff in error, Baquiran, Teves and Rustant, who were mounted and riding single file because the road was so narrow (R., 71, 73, 79). In answer to the question, "Did you people ride ahead of the Chinaman on the way back to the hacienda building," the witness Baquiran replied "No, behind" (R., 104). The witness Baquiran testified that the deceased not only refused to walk on leaving the house of Castellanes, but again on the road before reaching that hill, and a third time when the hillside was reached (R., 19). The government's testimony as to the refusal on the part of the deceased to walk is fully corroborated by the witnesses for the defense, Rustant and Teves (R., 69, 70, 74, 79). It is apparently clear from this testimony which is uncontradicted, except for the attempt to impeach it by the witness Baquiran (R., 104), who, if he be deemed to impeach it, must be demed to impeach himself—that there must have been a constant and repeated refusal to walk on the part of the deceased, and that he was practically struggling in the hands of Balayang and Ramos from the time that the three left the house of Castellanes until they reached the top of the hill near which was the casa hacienda. The testimony of both government and defense shows that the two servants who had the deceased in charge were exhausted when they reached the top of the hill; whether by forcing the deceased to walk or by carrying him up because he refused to walk; so much so that when at the top of the hill they had to call for assistance to take deceased to the hacienda building; and if they were so exhausted by their combined efforts it is only fair to suppose that their prisoner in resisting them was more exhausted than they. It is not to be presumed that he was

any too tenderly handled during his transit. A chance statement of the mute, Balayang, throws some light on this point.

> "Q. Who tied the Chinaman?
> "A. *I dragged the Chinaman.*
> "Q. Where did you drag him?
> "A. Out of the house.
> "Q. You mean out of the house of Castellanes?
> "A. Out of the house of Castellanes" (cross-examination, R., 47).

As against the uncontradicted testimony regarding the nature of the road which the party had to travel over, the fact that the plaintiff in error followed at a distance of seventy or eighty yards the two servants who held the deceased and into whose custody he was delivered (R., 19); and as against the evidence originally introduced by the government and fully supported by the defense, of the trouble arising from the constant attempts of the deceased to resist his captors, what evidence does the government offer and does the Supreme Court of the Philippines accept, as proving beyond a reasonable doubt that the condition in which the deceased was when he arrived at the top of the hill was due to two blows alleged to have been inflicted upon him by the plaintiff in error? The following statement made by a single witness as to the deceased's condition at the top of the hill:

> "Q. Why could not the Chinaman walk?"
> "A. *I do not know whether it was on account of the blows with the gun which he had received*" (R., 20);

and his affirmative reply to the following grossly leading question:

> "Q. Then, according to what you say, the Chinaman was unable to walk after being struck with the butt of the gun"? (R., 20).

There is only one other witness whose testimony implies in any way that the deceased's condition at the top of the hill was due to blows. This witness is Anacleto Duarte. He states (R., 40) that he thinks the Chinaman was completely exhausted because "he was unable to move his body and it seemed that he had been beaten very badly." He says, however, on cross-examination, that he thought that the Chinaman was exhausted simply because he kept quiet and said nothing (R., 41); that, in answer to a question from the court, he had no other reason for thinking that the Chinaman was in a weak condition; and in describing his condition remarked that he did not examine his body, but simply noticed that he did not speak (R., 41). There is little doubt that the government's evidence of the conditions of the deceased's transfer from the house of Castellanes to the top of the hill amply justifies the statements of the government's witnesses that he was exhausted when he reached the top of the hill. It is not contended here that no blows were struck the deceased, but it is confidently asserted that there is no evidence to show that his condition at the top of the hill was due to blows alleged to have been inflicted by the plaintiff in error. It is respectfully submitted that there is not a word of the government's testimony on this point which constitutes legal evidence of the fact that his condition when he reached there was due to the two blows alleged by the witness Baquiran to have been inflicted upon him by the plaintiff in error during the transit.

To sum up: two witnesses for the government, Castellanes and Baquiran, have testified that accused struck the deceased with the gun-butt two or three times in the house of Castellanes; and Baquiran alone states that plaintiff in error struck him twice on the way from the house, before the top of the hill near the hacienda building was reached. That a gun-butt is not *per se* a deadly weapon has been held by the Supreme Court of the Philippine Islands in a decision holding that

"it is not a weapon of such a character as to give rise by its use of an implied intent to kill. Evidently the defendant had no intent to kill. He did not mean to kill, nor can it be inferred, as it was in the court below, that an intent to kill was proven when the defendant testified that he intended to hit Reyes with the butt end of his gun. *Such a blow might do bodily harm and might not, depending on its force and the part of the body struck.* It might even result in death, but the conclusion does not follow that the defendant with deliberate premeditation tried to kill Reyes" (U. S. *vs.* Sabio, 2 Phil. Rep., 485).

The Supreme Court has held in this case that it was not used with an intent to kill. Neither one of these witnesses of the government utters a word of testimony from which it can be legally inferred that a violent or a dangerous use was made of the weapon by the accused; nor does their testimony indicate in any way that the accused struck the deceased in a vital or dangerous part. On the contrary, the evidence of the government is uncontradicted to the effect that the purpose of the accused in striking the deceased was no other than to wake him from a sound sleep from which a summons to wake three times given had failed to rouse him; that the purpose of this use was no more or less than to make the deceased walk when he refused to do so. In the absence of any testimony to the contrary, it is to be presumed that the accused used no more force than necessary to accomplish this end. And finally, in this connection, it may be stated that the record clearly shows, in spite of the finding of the Court of First Instance, that no explanation was offered to justify the arrest of the deceased without warrant of law that the accused was acting in accordance with and by the authority of a circular issued by the municipal president, and in conformity with the provision of section 40 of act 82 of the Philippine Commission (R., 27) and in accordance with the report made to him by the chief of police of the barrio in his official capacity and in compliance with said circular

(R., 8), which the accused was bound to obey, and which, in case he failed to obey, would have rendered him subject to the imposition of a fine not exceeding one hundred pesos or by imprisonment not exceeding three months or both (see chap. 53, title 10, sec. 316, Compilation of Acts of the Philippine Commission, p. 269); sec. 318 (*s*), (*v*), (*w*), (*x*). *ibid.*, p. 271; sec. 319 (*m*) (act 1309, amending act 82), *ibid.*, p. 274). It is submitted that the authority conferred by the law cited avoids the existence of whatever malice the performance of an unlawful act might be deemed to presume and the likelihood of undue violence which an unlawful intent might imply.

As to Expert Testimony.

The government produced two witnesses to testify as to the probable cause of the death of the deceased based on an examination of the deceased's body when it was exhumed on the evening of March 5th. The first of these was N. Claravall, the president of the board of health of Ilagan. This man at first stated that he was a physician by occupation (R., 47); on cross-examination he evades the direct question as to whether he is a licensed physician with the answer that he is a surgeon (R., 56); he states that he holds a license as a surgeon (R., 57); a license to practice the medical profession (R., 57). When, however, his paper is actually required and presented in evidence the document shows that it is a license to practice "as a ministering surgeon" (R., 63), and that that is all the license he has (R., 63). He states that he is "a surgeon by the University of Santo Tomas and duly registered as such by the medical board of examiners of the Philippine Civil Service" (R., 57). What constitutes a "ministering surgeon" under the laws of the Philippine Islands is to be found in section 864 of the Compilation of the Acts of the Philippine Commission, page 426. It is there provided that the board of medical examiners shall issue four

forms of certificates to persons who have been examined and favorably passed upon by that board: one, for persons holding the degree of doctor of medicine; two, for persons holding the degree of licentiate of medicine; a third for undergraduates in medicine, or "cirujanos ministrantes" (ministering surgeons), and a fourth for midwives; that a fee of 20 pesos shall be collected for each certificate of registration as a doctor of medicine or licentiate of medicine, and a fee of ten pesos for each registration as "cirujano ministrante," or midwife.

Section 866 provides that any person who has studied medicine for a period of no less than two years and who has received the title of ministering surgeon from the university of Santo Tomas may be registered to practice medicine in remote provinces and towns where no civilian doctor of medicine or licentiate is available upon passing a satisfactory examination before the district health officer for the province in which he desires to practice and paying to its provincial treasurer a fee of ten pesos for a certificate of registration.

From the above it appears that the witness Claravall was neither a physician nor a surgeon, but, on the contrary, in the words of section 864, an "undergraduate in medicine," or "cirujano ministrante," duly registered as such by the medical board of examiners; and it also appears that this certificate of registration did not entitle him to practice medicine; that he could only become entitled to practice medicine in his capacity as ministering surgeon in remote provinces where there is no licensed physician and upon obtaining from the provincial treasurer of the province a certificate of registration. The record shows the presence of a duly licensed physician in Ilagan in the person of Dr. Cesar Sorarain (R., 91) and contains no evidence to show that the witness Claravall obtained the certificate of registration from the treasurer of Isabela province, and is doubtful as to the issuance to him of any certificate, title, or license as a ministering surgeon, except the certificate issued to him by the board of

medical examiners of the Civil Service. These facts would indicate that he never practiced as a ministering surgeon.

This witness testifies (R., 48) that in accordance with instructions received from the justice of the peace of Ilagan and from the district superintendent of health he, in company with others, exhumed the body of the deceased on March 5th. On March 6th he certified to the report (defense Exhibit C), which describes the condition of the deceased as follows:

> "The deceased wore a coat, with short sleeves, made of striped cloth, wide trousers such as are ordinarily worn by Chinese, and under the coat a white undershirt, and having been stripped of the said clothing the body presented the following appearance:
>
> "The skin had a special color, with some blood clots described as follows:
>
> "The head was in a normal condition, some of the hair having fallen out; the face with an eye half open, and the tongue protruding about two centimeters out of the mouth; several livid spots on the neck, and blood clots on the right side about three or four centimeters more or less below the right nipple; several livid spots on the left shoulder; some blood clots and livid spots on the right shoulder and right forearm; livid spots on the lower abdomen; blood clots on the hips; and the rectum protruding about three or four centimeters more or less.
>
> "Upon opening the thoracic cavity the body presented certain blood clots upon the thoracic walls, as well as upon the pleura on the right side; the lung had a greenish color; the pharynx was in a normal condition; and the heart discolored and in a complete state of vacuity.
>
> "The body was swollen, particularly the abdomen, by reason of the formation of gases. Decomposition of the body had already set in.
>
> "The body presented no other injuries except those already enumerated."

This report was submitted in evidence by the defense and there verified by this witness (R., 57). In his direct

examination he states that the body "had certain spots on the neck which were livid; on the left shoulder and upper left arm the body presented several spots, also livid, and on the upper right arm he had some blood clots; on the right side, about three or four centimeters from the breast, the body presented several black spots; on the lower abdomen several livid spots; on the back of the body in the lumbar region and near the spinal column there were several black and blue spots (R., 49). On page 50 he says:

> "The spots on the neck, on the left shoulder, on the upper left arm, on the right shoulder and lower abdomen were merely such livid spots as you would usually find on dead bodies in a state of decomposition. The body had been buried four days, and on account of their color they might have been taken for spots made by contusions made with a blunt instrument.
>
> "Q. And how about the other spots, can you state how they were caused?
>
> "A. The *black* spots on the right side, those on the upper right arm and lumbar region, *on account of their red-blue color, are, frankly speaking, black-and-blue spots* caused by contusions made with a blunt instrument" (R., 50).

The use of the word "blood-clots" is hard to understand. It is clear, however, that the term does not mean clotted or coagulated blood resulting from wounds upon the body of the deceased, because this witness testifies that there were no wounds at all on the body (R., 56).

He testifies that the deceased died "as the result of contusions on the spinal column and on the lumbar region, which caused paralysis of the spinal nerves and also paralysis of the thoracic and breathing muscles and the abdominal muscles" (R., 50).

Comparing his original report with his testimony, the following vital discrepancies will be seen: in his testimony he makes a distinct reference to the *livid* spots found on the body to which he refers in his report and states that they are

due to decomposition. But in his testimony he refers to certain *black* spots (those "which by their red-blue color, are, frankly speaking, black-and-blue spots") of which absolutely no mention is made in his report. These spots, he states, are indications of the infliction of the blows which, he states, caused the death of the deceased. No mention whatever is made of these spots in his report, which excludes their existence with the words "the body presented no other injuries except those already enumerated." Again he testifies that the deceased came to his death on account of the blows (manifested by the black spots) inflicted by a blunt instrument. The only possible purpose of his original report must have been to find out whether the condition of the body indicated that deceased came to a violent death. Yet the report contains no such finding and no words from which it could be implied.

The spots caused by "a blunt instrument" have, says this witness "more or less the shape of the butt end of a gun.'" No mention whatsoever is made of the size of the spots, no attempt whatsoever to compare them in any way with the butt of the gun belonging to the plaintiff in error. Needless to say any contusion of any appreciable size might, if examined under circumstances whereby its dimensions could be intelligently ascertained, "more or less" resemble the butt end of a gun. Again, it is interesting to consider how a man on *horseback* could so strike a man *on foot* on the lower part of the back so as to give an imprint resembling a gun butt, or how a gun butt, being concave in shape, so as to fit against the shoulder, could leave *one* bruise, giving its outlines, rather than *two* distinct bruises showing the point of impact of the horns of the butt, and in no way resembling the outline of the butt.

The second "expert" presented by the Government is one Jose Banta, who, as far as the record shows, has never opened a medical book and who is merely a sanitary inspector (R., 57). This witness testifies to the fact that he saw some black

spots on the person of the deceased, on the right shoulder and armpit, also on the back of the shoulder and under the armpit; "other spots on the two arms, on the left shoulder, immediately below the shoulder and on the point of the nose" (R., 59, 60). His testimony on this point is as follows:

> "Q. Those spots that you saw, can you account for their existence?
> "A. They were due to a blow.
> "Q. Do you mean to say that they were the result of blows?
> "A. Yes, sir.
> "Q. With what kind of an instrument, with a sharp or a blunt instrument?
> "A. *With a sharp instrument.*
> "Q. *You mean to say by a blunt instrument, do you not.*
> "A. *Yes, sir.*
> "Q. And on that particular part of the body where you saw the spots such blows would upon that part of the body necessarily cause the death of the Chinaman?
> "A. It was sufficient to kill the Chinaman, first, because of the severity of the blows, and, secondly, on account of the lack of proper care.
>
> (Questions by the COURT:)
>
> "Q. In what part of the body in your opinion were the blows inflicted which caused the death of the Chinaman?
> "A. The darkness of the blood around the heart and the paleness and dryness of the latter were caused by the excitement and fear of the Chinaman and death followed.
> "Q. How were those blows on the external part of the body to which you referred manifested?
> "A. *The spots under the right armpit*" (R., 62).

Here, again, it seems worth while to consider how a man on horseback could strike a man on foot, whose arms were tied behind his back, *under the armpit.*

In connection with the testimony of these two witnesses the condition of the body at the time it was examined by them, as testified to by them, and corroborated by the witnesses for the defense who were present at the time the body was exhumed is in point. Deceased died in the early morning of March 2, and was buried about 8 o'clock that morning (R., 22). At half-past 5 in the afternoon of March 5 the body was exhumed for examination. The condition of the body at that time is described in the record as follows: Claravall says that it was in a state of decomposition (R., 50). Banta states that the body was in such a condition that he had to raise it single handed.

> "I had to do it alone because nobody cared to help me, for the reason that the body was considerably decayed." (R., 61.)

This evidence is amply substantiated by witnesses for the defense:

> "Q. Please state what was the condition of the body of the deceased as to the state of decomposition?
> "A. It was considerably decayed.
> "Q. Was it so badly decayed that the odor was noticeable?
> "A. Yes sir; the smell was very strong" (Maximo Teves, witness for the defense) (R., p. 82).

> "Q. Please state what the stage of decomposition was when the examination was made?
> "A. It was in a very advanced stage of decomposition; and the skin was falling apart; the humours were running out; and on account of the rupture of the skin, which was swollen, the epidermis, which is the first layer of the skin, was falling apart" (Dr. Sorarain, witness for the defense, Rec., p. 95).

Again, nothing approaching a complete autopsy of the body was made. Claravall himself states that the autopsy was not complete. "We merely made an external examination of the body and then proceeded to examine the thoracic

organs" (R., 58). Neither the abdomen nor the cephalic cavity was opened or examined (R., 92). An ordinary bolo was used in opening the body of the deceased and to cut the ribs (R., 59), and this was inserted by driving it in with a carpenter's mallet. These "experts" made an external examination of the body and then proceeded to examine the thoracic cavity, which apparently consisted in hacking it open with a bolo, taking out the deceased's heart and putting it back again. And yet on such an examination Claravall based his statement that the deceased's death was *due to paralysis of the spinal cord as the result of blows inflicted on the spinal and lumbar regions* with a blunt instrument.

It is confidently contended that the testimony given by Claravall and Banta constitutes no evidence in law of the fact that the deceased came to his death by blows inflicted upon him by the accused with his gun-butt. First, because neither of these witnesses was in any way qualified to judge as to the cause of the death of the deceased, for Claravall was only a medical student, who, as far as the record shows had never practised even as such, and had never before made an examination of this kind (R., 57); Banta, who as far as the record shows, had never even made a study of any of the branches of medicine. Second, because in the original report sent in by the witness Claravall of the condition of the body of the deceased when exhumed, which he certifies contains a complete statement of the injuries on the body of the deceased at that time, contains not a word concerning the injuries and the only ones which in his examination he assigns as the immediate cause of the deceased's death. Third, because in purporting to assign the causes of death by the appearance of the body at the time of the post-mortem examination the testimony of Claravall and Banta is in direct conflict on the point as to which blows caused his death, as well as the effect alleged to have been produced by those blows: Claravall testifying that death was caused by blows inflicted on the spinal and lumbar regions, Banta stating that the death was due to blows inflicted under the right armpit

of the deceased; Claravall assigning as the effect produced by the blow, spinal paralysis, and Banta fear and the effect of the blows. Fourth, because no autopsy was made and because the statement of Claravall that death resulted from spinal paralysis was based on no examination whatever either of the osseous cavity of the spine or of the cerebral cavity, without which, Dr. Sorarain, the only physician who took the stand, stated that an examination of the spinal column would be impossible (R., 92).

In addition to the fatal weaknesses above enumerated of the testimony given by the government's witnesses, which of themselves are such as to preclude their constituting legal evidence of the fact that the deceased died of blows inflicted upon him by the plaintiff in error, it is only fair, in summing up, to call the court's attention to facts apparent in the record which tend materially to detract from whatever probative value the statements of the more important of the government's witnesses might otherwise be supposed to have. As already pointed out in the "Statement of Facts" (folio p. 7) both Baquiran and the mute had been charged with the complaint which was later filed against the plaintiff in error, and in the case of Baquiran (and it is to be presumed, the mute) the case was dismissed as he himself states, because he promised and agreed to appear as a witness for the government in this case (R., 33). The former was put in jail he testifies "because I could not think well as to what I had to testify in this case" (R., 30) and "because the owner of the house also testified and my testimony did not jibe with his" (R., 31). The force of all this testimony is only weakened by his pitiful attempt to show that the whole responsibility for the death of the deceased lay with the plaintiff in error. In his direct examination he states for instance that the plaintiff in error sent for him (R., 17) and told him that they had to go out on patrol duty because orders had been received from the President to that effect (R., 18). In his original report to the Municipal President of Ilagan he

states: *"In compliance with the strict orders recently received from your office, I deemed it necessary to report to Don Juan Pico the fact that there were suspicious characters in the hacienda"* (R., 8); and on page 27 he admits the receipt of the circular from the Municipal President and the making public of the circular in the hacienda and barrio of Maluno. In his direct examination he testifies that his report was made under the dictation and at the suggestion of the plaintiff in error and Maximo Teves (R., 23); but on cross-examination he states that he sent the report in the performance of his duties as the lieutenant of the barrio and that he made it to the President of Ilagan as his superior (R., 28). Maximo Teves denies absolutely that he had connection of any kind with the making of this report. Finally he gives as the reason for the fact that the plaintiff in error struck the deceased with his gun after leaving the house of Castellanes that the deceased refused to walk; that plaintiff in error said to deceased "what is the matter with you, why don't you walk," and when deceased stopped struck him (R., 19). On redirect examination he contradicts this statement flatly with the assertion that before the hill was reached there was no trouble because the deceased refused to walk, giving as the reason of the deceased's failure to walk the fact that he was weak instead of the fact that he refused to do so. (R., 104.) Finally, his statement that the deceased was tied by order of the plaintiff in error on leaving the house of Castellanes is squarely denied by Government's witness Castellanes when called by the defense (Rec., p. 103).

The mute, Balayang, had in like measure as the preceding witness, and from the same cause, every reason to testify so as to exculpate himself and to lay the burden of the alleged crime on the shoulders of the plaintiff in error. Attention has already been called (folio p. 28) to the general incoherence of his testimony; that at best it constitutes an assertion that the deceased was struck, not in the house of Castellanes, not on the way from that house to the top of the

hill, but at the stairs leading into the house of the plaintiff in error, and that when so struck he was tied, thereby contradicting the testimony of all the other witnesses for the government on the point of whether or not the deceased was tied at the time, and of all but his wife, Anacleta Magas, as to the blow. The following circumstance, which appears in the record and to which apparently neither the trial court nor the Supreme Court of the Philippines attributed any weight whatsoever, appears in the following extract from his testimony regarding the alleged tying of the deceased:

> "Q. Who tied him up?
> "A. (The witness walked out and called a man whom the court ordered out of the room.) (The witness did not answer)" (Rec., p. 46); but thereupon states that it was the plaintiff in error, (Rec., p. 47).

The witness Anacleta Magas had every reason to lay the blame on the plaintiff in error, since by so doing she was protecting her husband, the mute.

The witness Claravall, in his effort to qualify as an expert, indulged in various false statements as to his qualifications, to wit, that he was a physician by occupation (R., 47); that he was a surgeon (R., 56); that he was duly registered as a surgeon (R., 57); that he held a license as a surgeon (R., 57), and that he held a license to practice the medical profession (R., 57). Finally, when forced on cross-examination to produce whatever documents he had concerning his medical status, he testified that he was licensed to practice as a ministering surgeon only (R., 63). His testimony as to the presence of contusions on the body of the deceased as evidence of blows inflicted upon him by a blunt instrument sufficient to cause his death absolutely contradicts the original report made by him at the request of the justice of the peace, which contains no reference whatsoever to these contusions, and in which, moreover, he specifically states that the body contained no injuries other than those therein

described. The "injuries" referred to in his report were stated by him in his testimony to be the result of decomposition. The fact that one eye was open and the fact of the protuberance of the rectum are explained by the testimony of the only physician who attended the post-mortem examination. As already pointed out, the report contains no statement of any kind that the deceased came to his death by violence.

The above discrepancies and contradictions stamp testimony of itself wholly incompetent in law to show that deceased came to his death through the violence of the plaintiff in error as coming from the mouths of witnesses whose regard for the truth was none too strong.

14th, 15th and 16th Assignments of Error.

THE SUPREME COURT ERRED IN IMPOSING UPON THE PLAINTIFF IN ERROR THE PENALTY OF SEVENTEEN YEARS FOUR MONTHS AND ONE DAY OF CADENA TEMPORAL AND THE ACCESSORY PENALTIES PROVIDED BY LAW, IN THAT THE PENALTY IMPOSED CONSTITUTES A CRUEL AND UNUSUAL PUNISHMENT WITHIN THE EIGHTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AS INCORPORATED INTO THE PHILIPPINE BILL OF RIGHTS.

The Philippine Bill of Rights provides in its fifth section that cruel and unusual punishment shall not be inflicted.

Article 403 of the penal code in force in the Philippine Islands provides that any person guilty of murder shall suffer a penalty ranging from *cadena temporal* in its maximum degree to death. In section 3 of chapter 3 Title III, of the penal code, under the heading "Penalties in which other accessory penalties are inherent," it is provided in article 56 that the penalty of *cadena temporal* shall carry with it the following penalties: (1) Civil interdiction of the convict during the term of sentence; (2) perpetual, absolute disqualification; (3) subjection to the surveillance of the au-

thorities during the lifetime of the offender. Article 42 of the penal code provides:

> "Civil interdiction shall deprive the offender, during the time of the sentence, of the rights of parental authority, of guardianship, either as to the person or property of any ward, of the right of membership in the family council, of marital authority, of the right to manage his property, and of the right to dispose of such property by any act or any conveyance *inter vivos.*"

This rule is subject to exception in cases in which the law expressly limits the effects of this penalty. Article 31 of the code provides:

> "The penalty of perpetual, absolute disqualification shall produce the following effects:
>
> "1. The deprivation of all honors and of any public offices and employments which the offender may have held, even if conferred by popular election.
>
> "2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.
>
> "3. The disqualification for any honor, office, or public employment, and for the exercise of any of the rights mentioned.
>
> "4. The loss of all right to retirement pay or other pension for any office formerly held, but without prejudice to any allowance for living expenses which the Government may see fit to grant the defendant for any distinguished service.
>
> "The provisions of this article shall not affect any rights acquired at the time of the conviction by the widow or children of the offender."

Article 43 of the Code provides:

> "Subjection to the surveillance of the authorities shall impose upon the offender the following obligations:
>
> "1. To have a fixed place of residence and to report the same to the authority directly charged with watching him, which residence cannot be changed without the knowledge and written consent of such authority.

"2. To comply with any rules concerning inspection which such authority may prescribe.

"3. To adopt some trade, art, industry, or profession, unless possessed of some known means of support.

"Whenever an offender is placed under the surveillance of the authorities the fact shall be reported to the Government and to the Governor-General."

The penalty imposed upon the accused was that of *cadena temporal in its maximum degree to death* (in its minimum degree) which is *cadena temporal* in its maximum degree, which, as expressed in terms of years, is from seventeen years four months and one day to twenty years. The actual term of imprisonment imposed upon the plaintiff in error was seventeen years four months and one day (see Penal Code, Penal Laws, and General Orders No. 58, Series of 1900. Manila, Bureau of Printing, 1911, page 154).

As appears by the caption of section 3 of chapter 3 of the penal code (*supra*) the accessory penalties are specifically designated as inherent to the imprisonment feature; and it has been so held by this court in the case of Weems *vs.* United States (217 U. S., 349, 382; 54 Law Ed., 793, 804). In that case the majority decision of this court was that this penalty "is cruel in its excess of imprisonment and that which accompanies and follows imprisonment"; that "these penalties come under the condemnation of the Bill of Rights, both on account of their degree and kind." The remarks of this court bearing on the cruel and unusual nature of this penalty expressed in the Weems case, make further elaboration superfluous. It may, however, not be out of place to call attention to the fact that if, as was held in the Weems case, the imprisonment there imposed—less by more than two years than that imposed upon the plaintiff in error in this case—together with the accessory penalties (which are the same) was not only cruel and unusual in kind but in degree, the same situation exists here. In the Weems case the act penalized was the falsification of a public document

by a public official. Here—conceding for the sake of argument that the deceased died as the result of blows inflicted upon him by the plaintiff in error—the act visited with such condign punishment is the act of the unintentional killing by the plaintiff in error of the deceased under circumstances which, as the record shows, furnish no evidence whatsoever of an unlawful intent either to kill or to harm the latter—which show at worst an excess of zeal in rendering as a private citizen that assistance to the public authorities in the barrio of Maluno which the law imposed upon him under penalty of fine or imprisonment to render, and which the lieutenant of the barrio was authorized to require of him and had called upon him to perform. Conceding for the sake of argument that the force used by the plaintiff in error exceeded what was necessary to force the deceased to go to the house of the plaintiff in error for detention—and there is nothing in the record which satisfactorily shows this fact—the acts or acts attributed to him as resulting in the death of the deceased would, at worst, constitute what is known as the offense of reckless imprudence, defined and penalized in article 568 of the penal code in force in the Philippine Islands.

This article provides that "any person who by reckless imprudence shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer a penalty ranging from *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium degrees shall be imposed." Homicide being a grave felony under Spanish law, the plaintiff in error could have been found guilty—had there been any evidence to show that the deceased came to his death through blows inflicted by the accused—of reckless imprudence, and could have been sentenced to imprisonment ranging from two months and one day to two years and four months, with a suspension of the right to hold pub-

lic office and the right of suffrage during the term of sentence (Article 61, Penal Code, and see p. 153, Penal Code).

Spanish jurisprudence offers many cases where the act of killing a person without unlawful intent and without any intention of bringing about such a result has been correctly held to constitute the offense of reckless imprudence and not homicide. Thus it has been held that where a father in the act of punishing a disobedient child of three caused the latter's instantaneous death by throwing a stick or wand at him, this was held to constitute reckless imprudence and not parricide, the court holding that it was perfectly legal for a father to punish his child and that the act was done without malice or intent to commit the injury which resulted (Sentencia, June 13, 1887; Viada, Penal Code, vol. III, p. 648); and that court has even gone so far as to hold that where a husband, stirred to anger by his wife's disobedience, kicked her in the loins with such violence as to produce the rupture of a varicose vein, followed by a hemorrhage, which caused death within a few hours, this act did not constitute the crime of parricide, or even that of reckless imprudence, but only a misdemeanor (Sen., May 6, 1887; cited Viada, Vol. III, Penal Code, p. 657, under the title of acts constituting a misdemeanor and not the crime of imprudence). In this case the court was not fully satisfied that death was the result of the husband's assault. (And see Sent. of November 21, 1884, and Sent. of November 30, 1885, cited in Viada, Codigo Penal, Vol. I, p. 24.)

The only purpose in citing these instances is to show that, even if it were a proven fact that the plaintiff in error caused the deceased's death, the penalty inflicted by the court for an act involving no moral turpitude on the part of the accused is as cruel and unusual in degree as it is in kind.

Conclusion.

For the reasons herein set out it is respectfully concluded:

1. That the conviction was wrong in that the complaint on which it was based does not sustain it.

2. That under Spanish law as well as the law of this country a verdict of murder in the first degree cannot be upheld where the court returning it finds as a fact that the accused did not intend to kill.

3. That the conviction of murder was unlawful and without due process of law in the absence of any legal evidence to sustain it.

4. That the punishment inflicted was cruel and unusual both in degree and kind and in violation of the eighth amendment of the Constitution of the United States and of the Philippine Bill of Rights.

For the reasons above set out it is respectfully urged that the judgment of the Supreme Court of the Philippine Islands be reversed and the plaintiff in error acquitted.

Respectfully submitted,

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INDEX.

	Page
I. STATEMENT OF THE CASE	2–5
1. Facts concerning the murder	2
2. Decision of the trial court	3
3. Decision of the Supreme Court of the Philippine Islands	4
(a) Affirmed the finding of facts	4
(b) Modified the penalty	5
II. ARGUMENT	6–37
FIRST POINT. The complaint is sufficient to support a sentence for murder under the Spanish law	7–11
1. The Philippine Penal Code, article 403	8
SECOND POINT. The Supreme Court of the Philippine Islands had the right to modify the judgment of the trial court and to impose upon the defendant the modified sentence	12–15
1. The Philippine Penal Code, article 403	12
2. *Ker & Co.* v. *Couden*, 223 U. S. 268, 279	15
THIRD POINT. The evidence sustained the finding that the Chinaman died as the result of the blows inflicted by Juan Pico	15–16
FOURTH POINT. The sentence imposed is not a cruel and unusual punishment in violation of the Philippine Bill of Rights	16–37
1. The punishment was not too great for the crime of murder	16
2. *Weems* v. *United States*, 217 U. S. 349, does not control	17
(a) Analysis of the *Weems* case, to show that the punishment there was disproportionate to the trifling crime involved	17
(b) The requirement of "painful" labor becomes unobjectionable when properly translated—a fact which did not appear in the *Weems* case	22

75715—13——1

11. **ARGUMENT**—Continued. Page.

(c) The provision for carrying chains and for surveillance for life were annulled upon the American occupation of the Philippines and are no longer imposed. 22

Chicago & Pacific Ry. Co. v. *McGlinn*, 114 U. S. 542, 546.

Downes v. *Bidwell*, 182 U. S. 244, 298.

Forbes v. *Chuoco Tiaco*, 16 Phil. Rep. 534, 592.

Fremont v. *United States*, 17 How. 542, 565.

Ortega v. *Lara*, 202 U. S. 339, 342.

Sanchez v. *United States*, 216 U. S. 167.

Vilas v. *Manila*, 220 U. S. 345, 357–358.

Davis on International Law (1903 ed.), 348.

Halleck on International Law (3d ed.), 486–490.

Risley, Law of War, 136.

Instructions of President McKinley to the Philippine Commission, Apr. 7, 1900..... 25

Halleck's International Law, vol. 2, p. 488... 27

(d) The punishment in this case is in fact fairly proportioned to the crime committed 33

(e) The objectionable portions of the punishment may be held invalid without affecting the balance of the punishment 35

In the Supreme Court of the United States.

OCTOBER TERM, 1912. No. 319.

JUAN PICO, *Plaintiff in Error,*

v.

THE UNITED STATES, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

Juan Pico was convicted of the killing of Go-Siengco (hereinafter called the Chinaman) and sentenced to life imprisonment, with the accessory penalties provided by the Philippine law (R. 107–110).

On appeal, the Supreme Court of the Philippine Islands modified the sentence by reducing it to imprisonment for 17 years 4 months and 1 day, and certain accessory penalties, and affirmed the judgment as so modified (R. 114–118).

To review that judgment Juan Pico sued out the present writ of error.

The trial court (R. 107) and the Supreme Court of the Philippine Islands (R. 114) have so carefully reviewed the testimony that their findings of fact should not now be disturbed.

STATEMENT OF THE CASE.

On March 1, 1909, at about 11 p. m., Juan Pico (who was the manager of a hacienda or ranch), accompanied by several of his employees and laborers, went to one of the houses on the ranch. On arriving at the front door Pico fired several shots from his shotgun; he went into the house, ascertained that there was a Chinaman there, and, on finding the Chinaman asleep, struck him with his gun to awaken him, and a struggle ensued. Under the direction of Pico, the Chinaman was taken out of the house, his arms were tied behind him, and he was made to march on foot about a half mile to Pico's house. Pico, and several others accompanying him, were on horseback, and two of his employees accompanied the Chinaman on foot.

During the march to Pico's house the Chinaman was several times struck by Pico with his gun and was roughly handled by the employees. The excuse offered by Pico and his employees for thus mistreating the Chinaman was the alleged refusal of the Chinaman to walk and his effort to escape. The refusal of the Chinaman to walk was more probably on account of his physical inability resulting from the beating he had just received. However that may be, by the time he was dragged to Pico's house, the Chinaman was in a state of utter collapse and exhaustion.

He was taken into Pico's office and laid on the floor, where he died about 4 a. m.

By 8 a. m. he was hurriedly buried; and on the same day one of Pico's employees (Baquiran), a petty official of the municipality, furnished a certificate to the municipal president that the Chinaman had died of heart failure, and gave as his authority the opinion of Dr. Teves, another of Pico's employees. (R. 8.)

Within a day or so something seems to have excited the suspicions of the municipal authorities, and the Chinaman's body was immediately exhumed. It showed evidences of violence, there being numerous discolorations and blood clots upon the body, with his "rectum protruding three or four centimeters."

Two of Pico's employees (Baquiran and Balayang, a mute) were promptly arrested for the murder; but a few days later they were dismissed, and Pico himself was arrested on March 15, 1909—just two weeks after the murder.

On March 26, 1909, Pico was tried for the murder before Hon. Richard Campbell, judge of the court of first instance, who heard a great deal of evidence (R. 13–106), and on April 3, 1909, rendered his decision, which contains a careful review of all the testimony (R. 107–110).

Decision of the trial court.

In that decision the court commented upon the demeanor of the different witnesses upon the witness stand, and his conclusion was largely reached from the appearance of the witnesses on the stand. He

said with reference to two of Pico's employees that, "having observed these men carefully while they were on the witness stand, the court does not believe their statements on this point" (R. 108).

Again, the court attached great importance to the testimony of another witness because he "manifested the utmost horror of what had taken place on the night in question," indicating "how the Chinaman had been tied and how the accused had struck deceased with the gun," and "his testimony bore all the evidences of truth." The court's decision was reached after pointing out an obvious deception on the part of the accused; and "taking into account all the personal circumstances of the witnesses and their conduct on the witness stand," the court was convinced that the accused is guilty of the crime charged beyond a reasonable doubt and without any qualifying circumstances.

This opinion of the Court of First Instance is entitled to the greatest weight here on the facts.

Decision of the Supreme Court of the Philippine Islands.

The Supreme Court of the Philippine Islands, in modifying and affirming the sentence, remarks that it is "the peculiar province of the trial court to resolve the question of credibility" (R. 115), and says (R. 116):

> We have read the evidence adduced on the trial with great care. The testimony of the witnesses Castellanes, Baquiran, Bienvenido

> Duarte, Anacleto Duarte, Magas, Balayang, Claravall, Banta, Bayad, and Eugenio, produced by the prosecution, is clear, direct, unequivocal, and powerful, disclosing no elements of untruth. Their probative force is overwhelming. They support in the very clearest and most forcible manner the findings of the trial court.

The Supreme Court of the Philippine Islands, however, modified the penalty from life imprisonment, etc., to one of a little over 17 years, as follows (R. 116):

> We have only one criticism of the judgment below. We are convinced that the court, in imposing the penalty, should have taken into consideration in favor of the accused the extenuating circumstance described in article 9, subdivision 3, of the Penal Code, namely, that "the delinquent had no intention of committing so grave an injury as that which he inflicted." There not having been present any aggravating circumstance, the penalty should have been imposed in its minimum degree.
>
> The judgment of the court below is hereby modified and the defendant is hereby sentenced to seventeen (17) years, four (4) months and one (1) day of cadena temporal, to the accessories provided by law, to indemnify the heirs of the deceased in the sum of one thousand pesos (₱1,000) and to pay the costs of the trial. So modified the judgment is affirmed, with the costs of this instance against the appellant.

ARGUMENT.

As the testimony appears in cold type, we have the case of a ranch owner, going at midnight with a body of his employees, to a farmhouse on his ranch, firing a shotgun at the door, entering, and, finding a Chinaman asleep, striking him with a shotgun, having him tied and forcing him to walk half a mile to his (the ranch owner's) house, beating him on the way, and taking him into the house in a state of collapse and exhaustion. The Chinaman dies in a few hours, his body is hurriedly buried, and, upon being exhumed, shows evidences of violence.

It is unnecessary here to go into any refined consideration of the value of the medical testimony concerning the cause of his death. The bare fact of an unoffending Chinaman being dragged out at midnight and beaten up, with his ensuing death a few hours later, when supported by the finding of the court which saw the witnesses is enough to establish for the purposes of this court that no substantial injustice has been done, and that the Chinaman met his death as the result of the injuries inflicted by Juan Pico.

In view of the findings of fact by the trial court and by the Supreme Court of the Philippine Islands, it is clear that there is testimony to support those findings, and that those findings are sufficient to to support the sentence.

It only remains to consider the strictly legal questions raised by the brief of the plaintiff in error.

There are no objections raised to the admission or rejection of evidence; and as the case was tried by the court, without the intervention of a jury, no question as to instructions arises.

It is simply a question under the Philippine law, *first*, whether the complaint supports the verdict, *second*, whether there is any evidence to support the findings of fact, *third*, whether the findings of fact support the sentence, and, *fourth*, whether the punishment inflicted is cruel and unusual, in violation of the Philippine Bill of Rights.

With the single exception of the question as to cruel and unusual punishment, none of the points urged in the plaintiff in error's brief is contained in the assignments of error (R. 127–131).

Assuming, however, that this court may notice the points raised in plaintiff in error's brief, even though not assigned, we will now review each of the grounds urged for the reversal.

FIRST POINT.

The complaint is sufficient to support a sentence for murder under the Spanish law.

The complaint charged that Juan Pico unlawfully and feloniously had the Chinaman tied by the neck and by the arms behind his back, rendering it impossible for the Chinaman to defend himself, and that Pico, with the intention of killing the Chinaman, struck him several blows with a shotgun, as the

result of which blows the Chinaman died, and that therefore Pico was guilty of

> the crime of murder, with the qualifying circumstance of *alevosia* (treachery), as defined and penalized in section 403 of the Penal Code. [The Penal Code of the Philippine Islands, Manila Bureau of Printing. 1911].

Article 403 of the Penal Code is as follows:

> The crime of murder is committed by any person who, not falling within the terms of the next preceding article [parricide], shall kill another under any of the following circumstances:
>
> 1. With *alevosia*.
> 2. For a price or promise of reward.
> 3. By means of inundation, fire, or poison.
> 4. With evident premeditation.
> 5. With cruelty, by deliberately and inhumanly, increasing the sufferings of the offended party.
>
> Any person guilty of murder shall suffer a penalty ranging from *cadena temporal* in its maximum degree to death.

Article 10 provides:

> The following are aggravating circumstances * * * That the act be committed with treachery (*alevosia*).
>
> There is treachery (*alevosia*) when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.

The complaint certainly sufficiently alleges the crime of murder as defined by the Philippine Penal Code.

1. It alleges that Pico, with the intention of killing the Chinaman, struck him with a shotgun, as the result of which striking the Chinaman died. That certainly charges that Pico killed the Chinaman.

2. The complaint charges that Pico had his servants tie the Chinaman "by the neck and by the arms behind his back," "thus rendering it impossible for the Chinaman to defend himself." Those allegations certainly charge that the killing was committed with treachery (*alevosia*), which is defined as being the "employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make." When Pico had his servants tie the Chinaman by the neck and arms, so as to render it impossible for the Chinaman to defend himself, Pico was certainly employing means in the execution of killing the Chinaman which tended directly and specially to insure the killing without any risk to Pico from any defense which the Chinaman might make. It would be difficult to conceive any means that would fall more directly within the definition of *alevosia* than for one man to have his servants tie another so as to render it impossible for the other to defend himself, and then to strike him and kill him. That was a most peculiarly apt method to adopt in killing a man

which would directly insure the killing without any risk to the murderer arising from any defense which the victim might make.

It is difficult to follow the reasoning in the plaintiff in error's brief (pp. 15–17), because, while professedly dealing with the sufficiency of the complaint as a mere matter of law, it then mixes up questions arising on the evidence, which of course have no place in a discussion as to the sufficiency of the complaint itself.

The complaint was sufficient in alleging the crime of murder, with *alevosia;* and it certainly set out the means by which the killing was accomplished so as to bring those means within the definition of *alevosia*.

The Criminal Code of Procedure for the islands, as amended by General Orders, No. 58, series of 1900, provides, in section 6, that—

> A complaint or information is sufficient if it shows: * * *.
>
> 2. The designation of the crime or public offence charged.
>
> 3. The acts or omission complained of as constituting the crime or public offence in ordinary and concise language, without repetition, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended and the court to pronounce judgment according to right. (Penal Code, edition of 1911, Appendix, p. 288.)

The complaint here is surely sufficient to "enable a person of common understanding to know what is

intended"—in other words, to enable such a person to know that it was intended to charge the crime of murder with *alevosía*. The elements of the offense which the plaintiff in error in his first point contends are omitted from the allegations of the complaint may clearly be supplied by easy inference from what is alleged. So the objection in any event is no more than an objection to the form of the complaint, and is taken care of by section 10 of the Criminal Code of Procedure, which provides that—

> No information or complaint is insufficient, nor can the trial, judgment or other proceeding be affected by reason of a defect in matter of form which does not tend to prejudice a substantial right of the defendant upon the merits. (Id., p. 289.)

Furthermore, if the objection had really been important it could have been taken advantage of at the trial under section 9 of the Criminal Code of Procedure, which provides that—

> The information or complaint may be amended in substance or form, without leave of court, at any time before the defendant pleads; and thereafter, during the trial, as to all matters of form, at the discretion of the court, when the same can be done without prejudice to the rights of the defendant. (Id., pp. 288–289.)

SECOND POINT.

The Supreme Court of the Philippine Islands had the right to modify the judgment of the trial court and to impose upon the defendant the modified sentence.

The penalty for murder (to wit, killing another with *alevosia*) may range from (1) *cadena temporal* in its maximum degree to (2) death. (Philippine Code, art. 403.)

Cadena temporal in its maximum degree is imprisonment which ranges from 17 years 4 months and 1 day to 20 years (art. 28), plus the accessory penalties provided for in article 56.

Therefore, upon the conviction of Pico of murder, the court had the right to give him a penalty of life imprisonment, for life imprisonment is a penalty ranging between (1) *cadena temporal* in its maximum degree and (2) death.

The Supreme Court of the Philippine Islands affirmed all the findings of the lower court with but a single criticism, which was that the lower court in imposing the penalty should have taken into consideration, in favor of the accused, the mitigating circumstance "that the offender had no intention to commit so great a wrong as that committed." (R. 116; Penal Code, art. 9.)

The Supreme Court unquestionably held that Pico was guilty of murder—that is to say, that he had killed a man *by means* which insured the killing *without any risk* to the murderer from the defense of the victim. But, on the other hand, the Supreme

Court seems to have thought that when the lower court imposed the penalty for murder it might fairly have taken into consideration that Pico did not intend to commit as great a wrong as he committed; and that therefore, under the peculiar theory of the Spanish law of balancing the circumstances under which a crime is committed, with a view to increasing or diminishing the penalty to be imposed, Pico was entitled to some reduction in the penalty. It is impossible for an American court to pass intelligently upon the peculiar methods of the Spanish law with reference to the infliction of penalties and their increase or reduction, according to the court's discretionary view as to the particular circumstances of the case.

Therefore, when the Supreme Court of the Philippine Islands decided that it had the power to reduce the sentence of Pico from life imprisonment to one of far less severity, this court should not review the power of the Supreme Court of the Philippine Islands thus to temper, under its local procedure, the judgment below.

Inasmuch as the complaint is sufficient to support the sentence of murder, and as the testimony was likewise sufficient to support such sentence, the plaintiff in error is in no position to complain of a reduction in his sentence, and it should be assumed by this court that the Spanish law authorized such a *remittitur*.

The argument on pages 18-25 of plaintiff in error's brief to the effect that, by modifying the judgment below, the Supreme Court *ex necessitate* decided that

Pico did not intend to kill the Chinaman, is contrary to the precise findings of the Supreme Court. It found that—

> if the testimony of the witnesses for the prosecution is true, the defendant is guilty. That he is guilty, if the witnesses for the Government are to be believed, is beyond the possibility of doubt. * * * We have read the evidence adduced on the trial with great care. The testimony of the witnesses [naming them] produced by the prosecution, is clear, direct, unequivocal, and powerful, disclosing no elements of untruth. Their probative force is overwhelming. They support in the very clearest and most forcible manner the findings of the trial court. (R. 115–116.)

This finding of the Supreme Court of the Philippine Islands confirms the finding of the trial court—

> "that the accused is guilty of the crime charged in the complaint beyond a reasonable doubt and *without any qualifying circumstances,*"

except as to the italicized words, "without any qualifying circumstances,"; which words are those to which the Supreme Court refers when it said that it had but one criticism of the judgment below, namely, that it failed to take into consideration "the extenuating circumstance" provided for in article 9.

We submit, therefore, that the Supreme Court gave to Pico the benefit of the qualifying or mitigating circumstance which the lower court had not accorded him, and, in doing so, it reduced his sentence materially. After all, the questions arising in the

Philippine Islands under the Philippine laws can best be settled by the local tribunals except where there be so clear a departure from the fundamental principles of justice that this court feels bound to interfere. All matters dependent upon the ordinary construction and application of the provisions of the Philippine Penal Code should be left to the decision of the courts accustomed to administering that system of jurisprudence. (See *Ker & Co.* v. *Couden*, 223 U. S. 268, 279.)

THIRD POINT.

There was some evidence to sustain the finding that the Chinaman died as the result of the blows inflicted by Juan Pico.

In the brief for the plaintiff in error (p. 25–48) there is an elaborate analysis and discussion of the testimony with a view to showing that the blows inflicted by Pico could not have produced the Chinaman's death, and that the medical evidence as to the cause of the Chinaman's death was given by medical men of limited experience, and was not sufficiently convincing.

Here, again, it is a question of fact, upon which two courts have passed and whose finding this court should not disturb.

We have the unquestioned fact that Pico beat the Chinaman with a gun, that the Chinaman was quickly in a state of exhaustion and collapse, and quickly died while in Pico's house and in Pico's custody. It

is unnecessary to go into any refined discussion as to the scientific relation between (1) the blows, (2) their effect upon the vital organs, and (3) the ensuing death. Common sense rescues us from such arguments. The beating with a gun, the death while in Pico's custody, the physical appearance of the body, and the testimony (ignorant, if you choose to call it) of the medical men, are at least sufficient evidence to support the finding below (especially as there is no evidence to the contrary).

On this writ of error it is not necessary that the proof should be conclusive to this court but only that there should be *some* substantial evidence to support the judgment below.

FOURTH POINT.

The sentence imposed is not a cruel and unusual punishment in violation of the Philippine Bill of Rights.

This was a conviction of murder. The imprisonment for 17 years, with its accessory penalties of deprivation during that time of the rights of guardianship, management of property, disposition of property, forfeiture of public offices, disfranchisement, disqualification to hold office in the future, loss of pensions, surveillance after the expiration of the sentence with the obligation to have a fixed place of residence, without power to change it, except on consent of the authorities, and to adopt some trade or industry unless having some other known means of support, is not a cruel and unusual punishment;

nor is it so disproportionate to the offense of murder as to constitute such a disparity betweeen the offense and the punishment as to shock the conscience, with the conviction that it is a cruel and unusual punishment. The discussion of this subject by the Supreme Court of the Philippine Islands is so clear and satisfactory that we refer to it as better than any argument that we could make. (R. 119–126.)

Obviously the crux of this point is reached when we come to consider the application of *Weems* v. *United States*, 217 U. S. 349. Standing by itself the case now presented to the court would not suggest any peculiar difficulty in settling the fundamental inquiry. On the surface, however, the *Weems* case may seem to dispose of the situation without more. But it is believed not.

It is not proposed to question the holding there nor the doctrines laid down. That is not necessary. The purpose is simply to examine the decision and the reasoning of the court with a view to establishing their precise relation to the situation that is actually presented here.

Weems was charged with and convicted of the falsification of a public and official document "by perverting the truth in the narration of facts"—that is, by means of a false entry—in violation of article 300 of the Penal Code of the Philippines. For this the same article prescribed the penalties of *cadena temporal* and a fine of from 1,250 to 12,500 pesetas. Weems accordingly was sentenced to "fifteen years of *cadena*, together with the accessories of section 56

of the Penal Code and to pay a fine of four thousand pesetas."

For the purposes of the decision it was assumed that one sentenced to *cadena* should labor for the benefit of the State, *always carry a chain* at the ankle hanging from the wrists, be employed at "hard and *painful*" labor, and receive no assistance whatsoever from without the institution—these by reason of articles 105 and 106. It was also taken for granted that he would be subject to all the accessories prescribed by article 56—that is, to civil interdiction, perpetual absolute disqualification, and subjection to surveillance during life as defined in articles 42, 31, and 43, respectively.

On this understanding it was held that the law—article 300—under which the sentence was imposed, was repugnant to the cruel and unusual punishment clause of the Philippine bill of rights, and as there was no other law under which he could be sentenced the proceedings against Weems were ordered dismissed.

It is of the greatest importance here to determine just what led the court to this conclusion.

The condemnation of the sentence seems to have been directed against several fairly distinct features. Some of the incidents and accessories were condemned in themselves, with the greatest emphasis laid, it would seem, on the provisions for *wearing chains*, for "hard and *painful*" labor, and for *surveillance for life*. (See p. 366, 377–378.) But the opinion discloses, we think, that the really funda-

mental objection to the sentence was not so much an absolute one extending to all cases as it was an objection relative to the *particular offense* in question. It was that the punishment "did not fit the crime"; that it had not been measured out by the law-making power appropriately to the character and degree of the crime; that the crime charged, falsification of a public document, was not such a heinous offense as to "justify" such a stern sentence; and in this aspect emphasis was put on the length.

See p. 365: "Independent of degrees." Reference to mere length in itself.

p. 368: Reference to Massachusetts case that imprisonment for long term of years might be so disproportionate to the offense as to be void.

p. 371: Reference to dictum of Field, J., in 144 U. S. 323, that inhibition directed not only against punishments which inflict torture, "but against all punishments which by their excessive length or severity are greatly disproportioned to the offenses charged."

p. 372–373: Reference to members of constitutional convention and that they must have had in mind laws other than those which inflicted bodily pain or mutilation and must have aimed at power of legislature to fix excessive terms of imprisonment with what accompaniments they might.

See p. 375: Reference to Cooley's statement that "probably any new statutory offense may be punished to the *extent* [italics the court's] and in the mode permitted by the common law for offenses of a similar nature;' and reference to a North Carolina case, where imprisonment for five years and bond to keep the peace for five years was held cruel and unusual.

p. 377: Conclusion that the law in question "is cruel in its excess of imprisonment and that which accompanies and follows imprisonment. . . . Its punishments come under the condemnation of the bill of rights, both on account of their degree and kind."

p. 379: Reference to a consideration by the legislature of the mischief and the remedy in fixing punishment; and reference to degrees of burglary.

p. 380–381: Comparison with section 86 of Federal Criminal Code punishing the similar offense of embezzlement; and conclusion that the contrast "condemns the sentence in this case as cruel and unusual."

Such the dissenting opinion conceived to be the majority's chief objection, and such, we think, the whole impression of the majority opinion shows it to have been.

It remains to distinguish the present case.

Our contention is that the situation now presented is in reality an entirely different one; that it is so far removed from that on which the decision proceeded in the *Weems* case, especially with respect to the features of the sentence that determined the mind of the court there, that the decision now must be to uphold the law and the sentence under it; and further, that such a decision will be quite in accord with the doctrines there recognized.

This is based on the following propositions:

(A) The alleged requirement of "painful" labor becomes entirely unobjectionable in the light of an adequate translation of the code provision; while the provisions for carrying chains and for surveillance during life are to be disregarded, for they were in effect annulled on the American occupation of the Philippines.

(B) Construed in harmony with the foregoing, the sentence imposed under section 403 of the code, with respect both to the length of imprisonment and to the remaining accessories, is, even under the *Weems* case, not repugnant to the Philippine Bill of Rights; for so far from being beyond doubt unreasonable—and that would be the proper test—it bears relation to the character and degree of the offense which is obviously reasonable; and it is not "cruel" nor "unusual."

Considering these propositions at length:

A.

The alleged requirement of "painful" labor becomes entirely unobjectionable in the light of an adequate translation of the code provision; while the provisions for carrying chains and for surveillance during life are to be disregarded, for they were in effect annulled on the American occupation of the Philippines.

(1) The alleged requirement of "painful" labor may be put aside at once as affording no ground for objection. As the opinion of the Philippine Supreme Court points out (R. 121–122) the Spanish original of article 106 is not accurately rendered by the word "painful." *Penosos*, as the Spanish has it, rather conveys the notion of "laborious" or "that which causes hardship or involves great difficulty," and is used in conjunction with *duros* to give an intensive effect. More accurately, then, the provision is as it is given in the latest edition of the code: "They shall be employed in hard and burdensome labor." (Published by Bureau of Printing, Manila, 1911, see p. 35.) Nor do the words carry with them any "suggestion of physical or mental pain beyond that which is necessarily involved in the performance of enforced hard and laborious tasks by convicts." Thus understood the requirement can scarcely be said to be so different—if indeed it is different at all—from that which has always been and is enforced in the penal institutions of this country as to be clearly illegal.

The assumption that chains are used or that the law requires them was also not well informed. Inquiry has been made of the War Department and of the Philippine government, and in response it is cabled that although no special order can be found, yet—

> by reason of the treaty of Paris; the instructions of President McKinley to the Military Governor, General Merritt, of May 19, 1898; the proclamation of the latter on the capitulation of the Spaniards; and the general rule as to the continuation of the laws in a conquered or ceded territory, the article is considered as impliedly nullified and discontinued by reason of disuse.

The Philippine government replies also that the provision for surveillance during life has a like status.

In short, the punishment is not what it seems. Those elements that in the *Weems* case appear to have been considered repugnant to the Bill of Rights simply by reason of their intrinsic nature (irrespective of any question of apportionment to the degree of crime, 217 U. S. 366, 377) are in fact not comprehended in the law of the Philippines; nor, indeed, have they been at any time since the American occupation. So the supreme court of the islands has found its own law (R., 123–124), and so accordingly this court will be inclined to accept it to be. (See *Ker & Co.* v. *Couden*, 223 U. S. 268, 279.)

(2) It is important to consider further the theory on which we base the assertion that these provisions have in fact no existence in Philippine law.

(*a*) It would be desirable to be able to cite by volume and page a formal decree of annulment. Failure in this, however, is not fatal. The Philippine court discovers the existence in fact of such an order through a deduction based on the fact of the nonexistence of the practices in question and on principles of military administration. (R., 123–124.) The argument ought not to be difficult of acceptance. Given the fact—and so much must be accepted—that these penalties have been in disuse ever since the beginning of the American military occupation, it is certainly the reasonable and sensible conclusion, from a sound conception of military organization, that it was in pursuance of an order actually issued, probably informally. Nor can there be any doubt that it was entirely competent for the military authorities so to change the law during their formal occupation of the islands.

(*b*) But there is no need to work out the existence of an actual order. There is a more satisfactory basis. The objectionable provisions of the Philippine law went out automatically with the change of sovereignty. This was the result of a well-established principle of public or international law. The provisions were incompatible with American institutions. And while "whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country continue in force until abrogated or changed by the new government or sovereign," yet, "as a matter of course all laws, ordinances, and regulations in con-

flict with the political character, institutions, and constitution of the new government are at once displaced." (See *Chicago and Pacific Railway Co.* v. *McGlinn*, 114 U. S. 542, 546; *Downes* v. *Bidwell*, 182 U. S. 244, 298; *Ortega* v. *Lara*, 202 U. S. 339, 342; *Sanchez* v. *United States*, 216 U. S. 167; *Vilas* v. *Manila*, 220 U. S. 345, 357–358; *Fremont* v. *United States*, 17 How. 542, 565; 2 Halleck on International Law (3d ed.) 486–490; Davis on International Law (1903 ed.) 348; Risley, Law of War, 136; *Forbes* v. *Chuoco Tiaco*, 16 Phil. Rep. 534, 592.)

The principle, it is thus seen, has already been applied in this court to the case of the Spanish possessions. And it hits precisely the sort of municipal provisions now involved. It is said in the *McGlinn* case, and approved in *Downes* v. *Bidwell*, that—

> upon a cession of political jurisdiction and legislative power—and the latter is involved in the former—to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, *or authorizing cruel and unusual punishments*, and the like, would at once cease to be of obligatory force without any declaration to that effect. (182 U. S. 244, 298.)

That such was the actual result in the Philippines and that it was reached on this ground is seen from the statement by the Philippine authorities quoted above.[1]

[1] The instructions of President McKinley (referred to above in the cablegram of the Philippine government) to the Philippine Commission on the occasion of its succeeding to

The application of the rule—though frequently first made, as here, by the executive—is of course a *judicial* function as well. Thus in *Fremont* v. *United States, supra*, a Mexican law imposing disabilities on American citizens was determined to be "necessarily abrogated without a formal repeal" (17 How. 542, 565).

What is the rationale of the doctrine? What is the attitude of a court in applying it? Is the line of approach that taken in constitutional cases? These are questions that have a bearing here, particularly on the phase relating to the separability of the various features of the penalty imposed.

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the military authorities as the governing body of the islands should be considered rather as a ratification of the discontinuance by the military authorities of these objectionable penal features than as the first declaration of the discontinuance by the American Government. These instructions were given on April 7, 1900, and in the pertinent part they read as follows:

> Upon every division and branch of the government of the Philippines therefore, must be imposed these inviolable rules:
>
> That no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that excessive bail shall not be required, nor excessive fines imposed, nor cruel

First, then, what is the rationale? Halleck has put it as follows:

> When a country which has been conquered is ceded to the conqueror by the treaty of peace, the *plenum et utile dominium* of the conqueror will be considered as having existed from the beginning of the conquest. When it is said that the law political ceases on the conquest, and that the law municipal continues till changed by the will of the conqueror, it is not meant that these latter laws, *proprio vigore*, remain in force, but that, it is presumed, the new political sovereign has adopted them and continued them as a matter of convenience. They do not derive any force from the will of the conquered, for the person capable of having and expressing a will—the body politic, or law-making power of the con-

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and unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offence, or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches and seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder, or ex-post-facto law shall be passed; that no law shall be passed abridging the freedom of speech or of the press, or of the rights of the people to peaceably assemble and petition the government for a redress of grievances; that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed. (Philippine Commission, Public Laws and Resolutions, vol. 1, pp. XII–XIII.)

quered—is extinguished by the conquest. When, therefore, we come to pronounce upon the force of a law of the conquered people after the conquest, and to determine whether it has been tacitly adopted by the conqueror, we must look to the character of its provisions, and compare them with the laws and institutions of the conquering State: that is, with the will of the conqueror as *expressed* by himself in similar matters. Whatever is in conflict with, or directly opposed to, such expressions of his will, we can not presume to have been adopted by his tacit consent. Hence, Lord Coke says, if a Christian king should conquer an infidel country, the laws of the conquered, *ipso facto*, cease, because it is not to be presumed that a Christian king has adopted the laws of an infidel race. But, where there is no such conflict in the institutions and laws of the two countries, those of the conquered which regulate personal relations, commercial transactions, and property in all its modes of transfer and acquisition, are presumed to have been adopted as a matter of convenience. This rule of international law is both reasonable and just. Each case must rest upon its own basis, and be judged of by its own circumstances. From this view of the jurisprudence of the conquered country, we must determine what laws of the acquired territory remain in force, and what laws of the conqueror, *proprio vigore*, extend over such territory. (International Law, 3d ed., vol. 2, pp. 488–489.)

Second. What is the attitude of the court; is the line of approach that taken in constitutional cases?

In the light of the underlying reason just given it must be clear that there is a distinction between the attitude taken in determining that a law is unconstitutional and that taken in finding that it has been displaced under this rule of public or international law. In the one case a provision is found not to be law because, although actually enacted by the legislative branch, it is repugnant to the Constitution; in the other it is found not to be law for the reason that although on the statute book yet (because it would have been incompatible with the institutions of the new sovereign) it was in fact never enacted by the law-making power. This is important on the problem of the separability of various provisions in a law—or, more accurately, shows that really there is no problem here. In a constitutional case involving a statute, part of which can be seen to be valid and part not, it may indeed be difficult to determine whether the legislature confronted by the choice would have enacted the valid alone. But in the other situation the very result of the rule is that objectionable provisions are not continued—that is, are not enacted—and there can be no difficulty as to the remaining provisions, for they are taken care of by the further policy of the rule that seeks to preserve native laws and institutions to the utmost possible extent.

The distinction has another aspect. It may be suggested that there is no difference between "repugnancy to the Constitution" and "incompatibility with American institutions" and that the case

really raises the question whether the Constitution extended to the Philippines with the treaty of cession. But it seems quite otherwise. The Constitution is in reality a formal supreme law, with the attributes of our conception of law—for instance, that it is a command, that it pervades, so to speak, and is coextensive with a definitely ascertained and bounded territory. "American institutions" can scarcely be said to be embodied as a formal law. The notion of territory does not seem necessary to the conception. Nor do they operate as a command; rather they appear as persuading precepts. At all events they are different. So it is not necessary to determine whether and to what extent the Constitution went to the Philippines with the treaty. It is to be remembered on this that the Philippine Bill of Rights was not passed till some years after the treaty.

Admittedly the notion conveyed by the term "American institutions" has been left vaguely defined. It is certainly not necessary—even if possible—to give a completely inclusive definition. It may include some of the institutions perpetuated by the Constitution though not all. Conceivably it might include institutions which are to be found in the Constitution, if at all, only through broad implications. Thus in *Sanchez* v. *United States* (*supra*, at p. 175) a system of selling official positions was said to be "inconsistent with the spirit of our institutions." It does not include everything preserved by the Bill of Rights, for trial without jury is tolerated

in the Philippines. But there seems little room for doubt that it does include the institution, if we may call it such, under which cruel and unusual punishment is condemned. So the court said in the *McGlinn* case and repeated in *Downes* v. *Bidwell, supra.*

In short, then, under this doctrine of public law the provisions of the Philippine penal code in question were before the adoption of the Philippine Bill of Rights in effect stricken out and the only question now is whether what remains is repugnant to the Bill of Rights.

B.

Construed in harmony with the foregoing, the sentence imposed under section 403 of the code, with respect to the length of imprisonment and to the remaining accessories, is, even under the Weems case, not repugnant to the Philippine Bill of Rights; for so far from being beyond doubt unreasonable—and that would be the proper test—it bears relation to the character and degree of the offense which is obviously reasonable; and it is not "cruel" nor "unusual."

All of the punishment really left for consideration are its length, its condition that the prisoner "shall receive no assistance whatsoever from without the institution," and its incidents or accessories of civil interdiction and perpetual absolute disqualification. Its length is 17 years 4 months and 1 day—this under article 96 of the code. The accessories are defined as follows:

> Art. 42. Civil interdiction shall deprive the offender, during the time of the sentence, of

the rights of parental authority, of guardianship, either as to the person or property of any ward, of the right of membership in the family council, of marital authority, of the right to manage his property, and of the right to dispose of such property by any act or any conveyance *inter vivos*. This rule is subject to exception in cases in which the law expressly limits the effects of this penalty. (P. 18, Philippine Penal Code, 1911.)

Art. 31. The penalty of perpetual absolute disqualification shall produce the following effects:

1. The deprivation of all honors and of any public offices and employments which the offender may have held, even if conferred by popular election.

2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.

3. The disqualification for any honor, office, or public employment, and for the exercise of any of the rights mentioned.

4. The loss of all right to retirement pay or other pension for any office formerly held, but without prejudice to any allowance for living expenses which the Government may see fit to grant the defendant for any distinguished service.

The provisions of this article shall not affect any rights acquired at the time of the conviction by the widow or children of the offender. (Id., p. 17.)

None of these appears to have been regarded in the *Weems* case as absolutely objectionable from its very nature, and therefore as repugnant to the Bill of Rights no matter what the character or degree of the crime for which the law might impose it. Rather their cumulative impression of severity was contrasted with what was conceived to be the unimpressive character of the vice aimed at, and they were condemned for the unreasonableness of the contrast and for their obvious lack of relation to accepted theories of penology. (See 217 U. S. at pp. 365, 377, 379, 381, 385–387.)

From this viewpoint it must be clear that the present case discloses an essentially different situation. There is no such contrast between offense and punishment, no such lack of relation to what may be conceived to be imposed on the legislative discretion by the Bill of Rights. The thing is quite the other way. The offense committed, it is to be remembered, was *assessinato*, which corresponds to murder in the first degree as usually defined in this country (R. 119); the punishment imposed—that is, under the law as it really exists and is enforced—was, to repeat, just this: 17 years 4 months and 1 day of imprisonment at hard and difficult labor, with no assistance from outside the prison, and with the accessories of civil interdiction and perpetual absolute disqualification defined above. Whatever criterion is insisted on, can it be confidently felt that there is a fatal lack of relation here? The offense is the gravest known to

any jurisdiction of which our law takes account. And if the typical practice in American Commonwealths is to be the test, it certainly can not be said that the punishment is even substantially different from that actually prescribed here; much less that it is so much harsher and more shocking to American conceptions as to be under the ban as a cruel and unusual punishment. Indeed, so far as its term goes, it might well excite comment for its leniency. And it is not seen wherein its accessories differ in kind from the civil disabilities that attach to the status of the convict in common-law countries generally.[1]

If difference in degree is suggested, what is to be the test? How is it to be demonstrated that the legislature has clearly acted without judgment or with unrestrained power? At all events it would be difficult indeed to suggest a fair test by which the present case could be placed even within the zone of doubtful cases.

Nor is it apparent that the legislative motive has failed to reckon with theories of penal science. Whether as punishment, reformative agent, or preventive of crime the sentence seems even to supposedly enlightened American notions to have been prescribed with scientific restraint.

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[1] See article by Professor Henry Schofield in Illinois Law Review, vol. 5, pp. 327–334, to the effect that these accessories are not "punishments" anyway within the meaning of that word in the eighth amendment and the Philippine Bill of Rights.

C.

Assuming for the purpose of argument that the matter discussed above is not in the case, and that the objectionable provisions of the old law are in fact still in existence, there seems no good reason why recognition should not be given here to the principle that where a law is valid in one part and invalid in another, the invalid, if separable, may be disregarded and the valid enforced. So far as the structure of the code goes they are easily separable. Of course, the elimination of the objectionable portions can be effected only where it can be assumed that the legislature would have enacted the valid parts without the others. (*Employers' Liability Cases*, 207 U. S. 463, 501.) But this seems to be peculiarly the sort of case where that assumption can be indulged. The main thing, of course, is the imprisonment, is to lock the convict up, away from the rest of the world. The accessories were undoubtedly considered important, but can it be confidently assumed that, if they should fall, it was meant on that account to let the prisoner off altogether? (Cf. *United States* v. *Union Supply Co.*, 215 U. S. 50, 55.)

It is true this contention was made in the *Weems* case and was denied. (217 U. S. 381–382.) But since the court seemed to consider the imprisonment and the accessories to be invalid either separately or combined it must be taken that the remarks on their separability were not necessary to the decision. The *Union Supply Company's* case should therefore be allowed to stand.

Nor does it seem an insuperable objection to the application of this principle to say that the code was originally a Spanish enactment. (See 217 U. S. 382.) The incongruity of an investigation by an American court into the motives and mental processes of a Spanish legislature under a principle of American constitutional law may readily be admitted; but the code is in force now not as a Spanish enactment but by virtue of a decree, express or implied, of an American lawmaking power.

CONCLUSION.

An utterly unoffending Chinaman was dragged from his sleep at midnight by a group of men and beaten with a gun in the hands of Pico; and he died within a few hours while still in Pico's custody. The trial court (an American judge), who saw and heard all the witnesses testify, found that it was a cold-blooded murder and inflicted life imprisonment.

The Supreme Court of the Philippines, which did not have the advantage of seeing and hearing the witnesses testify, but only read the recital in cold type, thought that in imposing the sentence the lower court should have taken into consideration some extenuating circumstances as authorized by the peculiar provisions of the Spanish law; and therefore it *reduced* the penalty of life imprisonment to about 17 years, with a few accessory penalties which are not much greater than are imposed in this country under the parole system.

The lawyers trying the case in the Philippine Islands, and familiar with the laws, *did not even assign as error here the alleged errors now urged by the plaintiff in error's American lawyer.* That circumstance alone is quite persuasive that the points now urged would have no standing in a Philippine court.

The judgment should be affirmed, leaving Juan Pico to his remedy by application to the President for commutation of the sentence, if the Preisdent, on reviewing the record, should feel inclined to mitigate its severity.

WM. MARSHALL BULLITT,
Solicitor General.
LORING C. CHRISTIE,
Attorney.

FEBRUARY 3, 1913.

○

PICO *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 319. Argued February 25, 26, 1913.—Decided April 7, 1913.

Under art. 403, Philippine Penal Code, a person can be guilty of murder with alevosia (treachery) although there may have been no specific intent to kill; and so *held* that one who had his victim bound and then caused him to be violently beaten with an instrument likely to cause death was guilty of murder with *alevosia* even though he did not specifically intend that death should result.

Under the Philippine Penal Code, as at common law, men are presumed to intend the natural consequences of their acts.

An objection that a complaint charging murder with *alevosia* by beating a person to death is defective because it did not allege all the details proved as to the fact that the victim had been bound so as

to make defense impossible, should be made in the lower court where amendments are possible. It comes too late when made in this court for the first time.

The conviction by the Supreme Court of the Philippine Islands for murder with alevosia of one who had caused his victim to be bound and then beaten with an instrument likely to cause death, and a sentence of 17 years, 4 months and 1 day of cadena temporal and the accessories, and an indemnity to the heirs of his victim of 1,000 pesos, being a modification of the sentence of the Court of First Instance of cadena temporal for life and accessories and indemnity, sustained by this court as being in accordance with the evidence, without error of law and not in any manner depriving the defendant of his liberty without due process of law.

15 Phil. Rep. 549, affirmed.

THE facts, which involve the validity of a conviction and sentence for murder in the Philippine Islands, are stated in the opinion.

Mr. Clement L. Bouvé for the plaintiff in error:

The Supreme Court of the Philippines erred in convicting the accused of the crime of murder since the complaint is so formed that it will not support a sentence for murder under the Spanish law. See article 403, Penal Code, Philippine Islands.

As to what "killing a person with alevosia" means, see par. 2, art. 10, Penal Code.

The complaint contains no allegation of such treacherous intent as is necessary to constitute the charge of murder with alevosia. See Viada Codigo Penal, vol. III, pp. 24–25.

The Supreme Court of the Philippine Islands erred in convicting plaintiff in error of murder with treachery, finding as it did as a matter of fact that he did not intend to kill the deceased.

The intent to kill is, under the Spanish law as it is in our own, of the very essence of the crime of murder. Sent., June 13, 1887; Viada Codigo Penal, vol. III, 647; *United States* v. *Dasilva*, 14 Phil. Rep. 413; *United States*

v. *Mercoleta*, 17 Phil. Rep. 317; *United States* v. *Balagtas*, 19 Phil. Rep. 164.

The defenceless situation of the victim, coupled with the intent to kill, does not make the killing murder.

The Supreme Court erred in affirming the finding of the court below that plaintiff in error killed the deceased, in that there is no evidence as a matter of law that deceased died as the result of blows inflicted by plaintiff in error. *Wiborg* v. *United States*, 163 U. S. 652; *Clyatt* v. *United States*, 197 U. S. 207, 222; *Diaz* v. *United States*, 223 U. S. 442.

The testimony, both expert and non-expert, does not sustain the conviction.

The punishment imposed upon plaintiff in error of seventeen years, four months and one day of cadena temporal and the accessory penalties provided by law, constitutes a cruel and unusual punishment within the Eighth Amendment as incorporated into the Philippine Bill of Rights. *Weems* v. *United States*, 217 U. S. 349, 382.

Mr. Solicitor General Bullitt, with whom *Mr. Loring C. Christie* was on the brief, for the United States:

The complaint is sufficient to support a sentence for murder under the Spanish law. Philippine Penal Code, art. 403.

The Supreme Court of the Philippine Islands had the right to modify the judgment of the trial court and to impose upon the defendant the modified sentence. Philippine Penal Code, art. 403; *Ker & Co.* v. *Couden*, 223 U. S. 268, 279.

The evidence sustained the finding that the Chinaman died as the result of the blows inflicted by appellant.

The sentence imposed is not a cruel and unusual punishment in violation of the Philippine Bill of Rights. The punishment was not too great for the crime of murder. *Weems* v. *United States*, 217 U. S. 349, does not control, as

in that case the punishment was disproportionate to the trifling crime involved. The requirement of "painful" labor becomes unobjectionable when properly translated—a fact which did not appear in the *Weems Case*.

The provision for carrying chains and for surveillance for life were annulled upon the American occupation of the Philippines and are no longer imposed. *Chicago & Pac. Ry. Co.* v. *McGlinn*, 114 U. S. 542; *Downes* v. *Bidwell*, 182 U. S. 244, 298; *Forbes* v. *Chuoco Tiaco*, 16 Phil. Rep. 534, 592; *Fremont* v. *United States*, 17 How. 542, 565; *Ortega* v. *Lara*, 202 U. S. 339; *Sanchez* v. *United States*, 216 U. S. 167; *Vilas* v. *Manila*, 220 U. S. 345, 357; Davis on International Law (1903 ed.), 348; Halleck on International Law (3d ed.), 486–490; Risley, Law of War, 136; Instructions of President McKinley to the Philippine Commission, April 7, 1900.

The punishment in this case is in fact fairly proportioned to the crime committed.

The objectionable portions of the punishment may be held invalid without affecting the balance of the punishment.

MR. JUSTICE LAMAR delivered the opinion of the court.

Juan Pico, claiming the right as Patrol to arrest suspicious persons in the Hacienda of Malunó, within the municipality of Ilagan, Province of Isabela, Philippine Islands, on March 1, 1909, entered the house of Eugenio Castellanes in the night time and inquired if there was any one else on the premises. He was told that there was a Chinaman asleep in the next room, and, going there with several attendants, ordered him to get up. Receiving no answer, Pico struck him with a gun. The Chinaman arose and seized the gun as Pico again attempted to strike him. After some altercation, he was overpowered, and Pico ordered his attendants to bind him. This they did, putting a rope around his neck, tying his arms behind

his back, and, in this condition, he was ordered out of the house for the purpose of being taken to the nearby Hacienda, of which Pico was manager. Whether through unwillingness or physical inability resulting from the blow previously inflicted, does not clearly appear, but the Chinaman refused to walk and Pico again struck him several times with the gun. Partly dragged and partly carried, the Chinaman was in a state of collapse when he reached the Hacienda, where, a few hours later, he died. The next morning at 8 o'clock he was buried,—a medical employé on the estate giving a certificate that he had died of heart failure. The suspicion of the authorities having been aroused the body was disinterred, and, as it exhibited signs of external violence, Pico and two of his attendants were arrested, Pico being charged "with the crime of murder, with the qualifying circumstance of alevosia (treachery) as defined and penalized in § 403 of the Penal Code,[1] in that . . . he feloniously ordered his two servants to seize and tie the Chinaman, Go-Siengco, and thus tied and unable to defend himself the said Pico, with the intention of killing the said Chinaman, struck him several blows with a shotgun, as the result of which blows the Chinaman subsequently died."

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[1] Art. 403. The crime of murder is committed by any person who, not falling within the terms of the next preceding article [relating to Parricide], shall kill another under any of the following circumstances:

1. With alevosia.
2. For a price or promise of reward.
3. By means of inundation, fire, or poison.
4. With evident premeditation.
5. With cruelty by deliberately and inhumanly increasing the suffering of the offended party.

Art. 10, § 2. There is treachery (alevosia) when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.

The evidence for the Government was direct and positive and left no reasonable doubt as to the guilt of the defendant, unless the witnesses for the prosecution were unworthy of belief. Their credibility, though attacked, was sustained by the trial judge, who found the defendant guilty and sentenced him to cadena temporal, to be confined in the Bilibid Prison for the term of his natural life, with accessories named in Art. 54 of the Code, and to pay the heirs of the Chinaman 1,000 pesos. A motion for a new trial was overruled and on appeal the Supreme Court stated that only a question of fact was involved, and that the testimony for the Government, being direct and without elements of untruth, fully supported the findings of the trial court:

"We have only one criticism of the judgment below. We are convinced that the court, in imposing the penalty, should have taken into consideration in favor of the accused the extenuating circumstances described in Article 9, subdivision 3, of the Penal Code, namely, that 'the delinquent had no intention of committing so grave an injury as that which he inflicted.' There not having been present any aggravating circumstance, the penalty should have been imposed in its minimum degree." (15 Phil. Rep. 551.)

1. It is claimed that this finding was in legal effect an acquittal, and several decisions of the Supreme Court of Spain are cited to support the argument that there can be no "murder with alevosia" unless there was a specific intent to kill the person bound. We cannot so construe the Philippine Code. Under it the killing of a human being is parricide, murder or homicide, depending, not always on the intent, but upon the relation of the parties and the circumstances under which and the means by which life was taken. On the trial of a charge of "murder with premeditation," there might be call for proof of a specific intent, but even then that could usually

be established only by external circumstances capable of proof. But in the case of murder with cruelty or with alevosia, the intent would be immaterial, although the accused might claim that he thought that the cruelty would not cause death or that the beating would punish and not destroy the person who was bound. Under the Penal Code of the Philippines, as at common law, men are presumed to intend the natural consequences of their act and cannot escape punishment for taking life on the claim that they had not intended or expected that such consequence would result from what they purposely did.

In this case Pico was not charged with "murder with evident premeditation." As the Chinaman was, at the time, bound and defenseless, Pico was guilty of "murder with the aggravating circumstance of alevosia," punishable by the minimum, medium or maximum penalty, depending on the presence or absence of mitigating or aggravating circumstances, as defined by the Code,[1] which permitted effect to be given to the absence of a specific intent by a mitigation of the punishment. This we understand to be the effect of the decision of the Supreme Court of the Philippine Islands, and not, as claimed, an acquittal of the charge on which Pico was tried. *United States* v. *Brobst*, 14 Phil. Rep. 310; *United States* v. *Candelaria*, 2 Phil. Rep. 104.

The decisions cited by plaintiff in error do not require a reversal, for none of them relate to a case like this, where the accused, having himself ordered his victim to be bound, consciously, intentionally and repeatedly beat him with an instrument likely to produce death.

2. It was also contended that the complaint was defective in failing to allege that the Chinaman had been tied

[1] Art. 78. Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

for the purpose of making defense impossible and so that he might be killed without risk to the accused. This objection comes too late. It was not made in the Supreme Court nor in the trial court, where amendments could have been made even if necessary under the liberal system of criminal pleading authorized by §§ 6, 8, 9, and 10 of the Appendix to the Penal Code of the Philippine Islands.

3. Pico was sentenced by the Supreme Court to 17 years, 4 months and 1 day of cadena temporal, to the accessories provided by law and to indemnify the heirs of the deceased by the payment of 1,000 pesos. In the record there is an assignment of error that this was cruel and unusual punishment (*Weems* v. *United States*, 217 U. S. 349), but on the argument the contention was abandoned in open court, and the point will therefore not be considered. In other assignments complaint was made that Pico was deprived of his liberty without due process of law,—because the evidence was insufficient to prove beyond a reasonable doubt that the Chinaman died as a result of the blows inflicted by Pico; because the Supreme Court refused to pass upon the credibility of witnesses in the trial court; because he was refused a new trial on the ground of newly discovered evidence, and because one of the witnesses admitted to have given false testimony. We find no error of law. The evidence fully sustained the conviction, and the judgment is

Affirmed.